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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

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No. 78- **91**

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R. W. JONES, SR., *et al.*,  
*Petitioners,*

v.

CHARLES T. WOLF, *et al.*,  
*Respondents.*

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA**

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
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R. W. Jones, Sr., *et al.*, respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia in the above-entitled case.

**OPINIONS BELOW**

The opinion of the Supreme Court of Georgia (App. 11a-16a) is not yet reported. The Order of the Supreme Court of Georgia denying rehearing (App. 18a) is not reported. The opinion of the Superior Court of Bibb County, Georgia (App. 1a-10a) is not reported.

**JURISDICTION**

The judgment of the Supreme Court of Georgia was entered on April 4, 1978. The Order of the Supreme

Court of Georgia denying a timely petition for rehearing was entered on April 19, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

### QUESTION PRESENTED

Does the First Amendment, as interpreted by this Court in *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976), require civil courts to defer to a hierarchical church court decision concerning which of two competing factions is the "true congregation," and thus is entitled to use and control of local church property?

### CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof \* \* \*.

U.S. Const., Amend. XIV, Sec. 1:

\* \* \* nor shall any state deprive any person of life, liberty, or property, without due process of law \* \* \*.

### STATEMENT OF THE CASE

The issue before the lower courts in this case was which of two competing factions constitutes the "true congregation" of the Vineville Presbyterian Church in Macon, Georgia, thus entitling that faction to continued use of the church property. The facts were not in dispute, as the evidence before the trial court consisted solely of a Stipulation of Facts, together with incorporated exhibits, agreed to by both parties. There was a sharp dispute, however, concerning the proper legal standards by which the civil courts constitutionally can review such a church controversy.

On May 27, 1973, the congregation of the Vineville Presbyterian Church met and considered a resolution calling for withdrawal of the local church, and its property, from affiliation with The Presbyterian Church in the United States ("TPCUS").<sup>1</sup> The members of the congregation present at that time voted 165-94 in favor of the resolution, and the pastor that day notified the Augusta-Macon Presbytery of TPCUS of this action. The 165 members seeking withdrawal, who were represented in this class action by defendants (Respondents here), proceeded to strike from the church rolls the names of plaintiffs (Petitioners here), the 94 loyal church members.

As the trial court found (App. 3a-4a, 6a), TPCUS has what is commonly called a connectional, or hierarchical, form of church government and organization.<sup>2</sup> The Book of Church Order (Exhibit A),<sup>3</sup> which governs church affairs, provides that each Local Church Unit shall be governed by its Session (consisting generally of the Pastor and elected Ruling Elders); the Session is governed

<sup>1</sup> The Presbyterian Church in the United States will be referred to herein as "TPCUS," following the style of the decision below. See App. 1a.

<sup>2</sup> See Note, *Serbian Eastern Orthodox Diocese v. Milivojevic: The Continuing Crusade for Separation of Church and State*, 18 WM. & MARY L. REV. 655, 656 n.10 (1977):

Hierarchical churches are those in which church authority reposes either in ascending levels of adjudicatory bodies (presbyterian hierarchies) or in sublime clergy, such as bishops and popes (episcopal hierarchies). In contrast, congregational churches are characterized by autonomous local congregations that govern themselves without control by a higher church body. \* \* \* Examples of hierarchical churches of the presbyterian variety include the Presbyterian, Methodist, and some Lutheran churches. The episcopal type includes the Roman Catholic and Eastern Orthodox churches. Congregational churches are exemplified by the following churches: Baptist, Disciples of Christ, Quakers, and Churches of Christ.

<sup>3</sup> Exhibits to the Stipulation of Facts will be designated herein as "Exhibit \_\_\_\_."



by a Presbytery, which has jurisdiction over several Local Church Units in a geographic area; each Presbytery is governed by a state Synod; and the Synods are governed by the General Assembly. App. 3a-4a.

The Book of Church Order states that these governing bodies, which are called "Church Courts," have limited and defined jurisdictions, and that "the lower courts are subject to the review and control of the higher courts." Exhibit A, § 14-5, at 40 (emphasis added). The power to dissolve a church, organize a new church, or unite or divide churches at the request of the members rests with the Presbytery. *Id.*, § 16-7, at 46. While the power to hold and convey title to local church property rests with the officers of an incorporated local church, such as the Vineville Presbyterian Church (Stipulation of Facts, at 2), such power is subject to the control of the Session and to the Constitution of TPCUS. Exhibit A, § 6-2, at 26-27. "If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property," the property must be conveyed to the Presbytery. *Id.*, § 6-3, at 27.

The Book of Church Order provides that a church court may establish a judicial or administrative commission to hear disputes and render opinions, and it sets forth detailed procedures for the hearing of such disputes and for appeals to the higher governing bodies. *See id.*, §§ 14-6, 16-7(1), 17-5(1), 18-6(1) & chapters 13-18.

In the instant case, following passage of the Vineville Church resolution of May 27, 1973, the Augusta-Macon Presbytery appointed a commission to consider this dispute. The Commission subsequently issued a written ruling that the withdrawing members had forfeited their authority to act for the church and that the 94 loyal members were the "true congregation of Vineville Presbyterian Church." Exhibit U, ¶ 1. No appeal was taken from the

Commission's decision, but Respondents nevertheless refused to give the 94 Petitioners control of, or even access to, the church property. App. 5a.

Petitioners then instituted this litigation,<sup>4</sup> seeking a declaratory judgment that pursuant to the church court decision they constitute the true congregation of Vineville Presbyterian Church, and therefore that they are entitled to control over the local church property.

On September 29, 1977, the Superior Court of Bibb County, Georgia, entered its opinion in favor of Respondents. The court noted that legal title to all property of the Vineville Church is vested in the local, not the national, church—a proposition which Petitioners had never challenged. The court then apparently concluded,<sup>5</sup> without explanation, that TPCUS has "no authority" to declare Petitioners the "true congregation," and that the church "is represented by" Respondents. App. 9a.

<sup>4</sup> Petitioners initially brought this action in federal court, since they assumed that Respondents were relying upon a Georgia statute that appeared to give some color of right to their actions, and Petitioners claimed that the statute was unconstitutional. However, when Respondents stipulated that they were in no way relying upon this statute, the federal court dismissed for lack of jurisdiction, holding that the basic dispute arose under state property law, even though federal constitutional issues ultimately might arise. *See Lucas v. Hope*, 515 F.2d 234, 236-237 (5th Cir. 1975), cert. denied, 424 U.S. 967 (1976).

<sup>5</sup> *See* App. 9a:

This Court concludes as a matter of law that legal title to all the church property of VPC is vested in the local church which is represented by defendants. TPCUS had no authority by resolution to constitute plaintiffs as trustees or as the true congregation for the purpose of creating a trust relationship with respect to the church property of VPC when none previously existed, expressly or by implication and insofar as such action (Exhibit F) [sic] sought to confer any rights of property upon plaintiffs or those they represent, such declaration is declared void and of no force and effect.

It is not clear whether the trial court was holding that TPCUS has "no authority" to determine which of two competing factions is the

The Supreme Court of Georgia, in an opinion entered April 4, 1978, affirmed the trial court. The Georgia Supreme Court recognized that civil courts are forbidden by the First Amendment from resolving church property disputes "on questions of an ecclesiastical nature," citing *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) (hereinafter, "*Hull*"). The court held, however, that it could resolve this dispute under "neutral principles of law" by looking to the property deeds and other proof that formal title rested with the local church. App. 13a. The Georgia Supreme Court noted, but then failed to discuss in any way the significance of, the church court determination that Petitioners are the true congregation of the local church. It also ignored Petitioners' contention that this Court's decisions culminating in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), require that civil courts give binding deference to such determinations by church courts within hierarchical churches.

On April 19, 1978, the Georgia Supreme Court denied Petitioners' timely petition for rehearing, and this petition for a writ of certiorari followed.

#### REASON FOR GRANTING THE WRIT

##### The Lower Courts Are in Conflict and Confusion Concerning the First Amendment Principles Enunciated in *Serbian Eastern Orthodox Diocese v. Milivojevich*.

The decision of the court below not only ignores this Court's holdings concerning the deference which the First

"true congregation," or whether the court's conclusion quoted above was limited to TPCUS' authority with regard to "creating a trust relationship." Insofar as the court was referring to the latter, it was deciding an issue not involved in this case, since Petitioners have never argued that they or TPCUS has any "trust" interest in the property, but rather that the Petitioners constitute the proper and only congregation, and thus owner, of the local church.

Amendment requires civil courts to give to the decisions of church courts within hierarchical churches, but it also represents the latest example of an unfortunately lengthy list of conflicting decisions by different courts purporting to interpret the constitutional rules in this area. This Court should grant certiorari here so that the various national hierarchical churches, and their many millions of members, need not continue to suffer contradictory rulings concerning their powers and jurisdiction.

Beginning with *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), this Court has held that "the rule of action which should govern the civil courts \* \* \* is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these [hierarchical] church judicatories to which the matter has been carried, the legal tribunals must accept such decision as final, and as binding on them \* \* \*." *Id.* at 727.<sup>6</sup> In subsequent decisions this Court has made clear that the *Watson* principle of deference to decisions of hierarchical church courts is fully grounded in the First Amendment, see *Hull, supra*, 393 U.S. at 446-449; *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952), and applies to issues of internal church government and polity, as well as to questions of faith or doctrine. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-722 (1976); *Kedroff, supra*, 344 U.S. at 116.

However, in dictum in *Hull, supra*, 393 U.S. at 449, this Court for the first time referred to "neutral principles of law" which lower courts might use to resolve these

<sup>6</sup> The Court went on to state that "[i]t is of the essence of these religious unions, and of their right to establish tribunals for the decisions of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." *Watson v. Jones, supra*, 80 U.S. (13 Wall.) at 729.



church property disputes. In a concurring opinion for three members of the Court in *Maryland & Virginia Eldership v. Church of God*, 396 U.S. 367, 368 (1970), Mr. Justice Brennan cited the "neutral principles" language of *Hull* and suggested that under some circumstances it might provide an alternative approach to that set forth in *Watson* and its progeny regarding the resolution of such church property disputes. 396 U.S. at 368-370.

Following *Hull* and *Maryland & Virginia Eldership*, some courts and commentators suggested that this Court had retreated from its First Amendment ruling that civil courts must defer to the decisions of hierarchical church courts.<sup>7</sup> Nevertheless, in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), the Court re-emphasized the constitutional command that civil courts must defer to such church court determinations. The *Serbian* Court reversed a state court judgment because "it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes." *Id.* at 708. The final paragraph of the Court's opinion in *Serbian* summarizes the applicable constitutional rule (*id.* at 724-725):

In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are

<sup>7</sup> See, e.g., *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston*, 531 S.W.2d 301, 304 (Tenn. App. 1975); *The Supreme Court*, 1968 Term, 83 HARV. L. REV. 7, 128-130 (1969); 54 IOWA L. REV. 899, 904 (1969).

created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

In the instant case, the Georgia courts totally ignored the *Serbian* Court's mandate requiring acceptance of the decision of the appropriate ecclesiastical tribunal on a matter pertaining to the internal government of a hierarchical church. Despite the fact that a duly authorized and constituted commission of the Augusta-Macon Presbytery had ruled that Petitioners comprise the "true congregation of Vineville Presbyterian Church," the Georgia Supreme Court failed to defer to, or even to discuss, that determination. Indeed, the trial court had suggested without explanation or support that the church court has "no authority" to make such a decision.<sup>8</sup> See App. 9a.<sup>9</sup>

<sup>8</sup> This ruling by the trial court directly contravenes the teaching of *Serbian* that a civil court may not substitute its own interpretation of church law for that of the designated ecclesiastical tribunal. See 426 U.S. at 720-724.

<sup>9</sup> While paying lip service to the fact that TPCUS is a hierarchical church, the Georgia courts failed to focus on some of the particular provisions of the Book of Church Order, and its implementing guidelines, which other courts have found determinative in cases such as this. See *Mills v. Baldwin*, Civ. Action No. 73-100, at 6-7 (Fla. Cir. Ct. 1975), *rev'd*, 344 So. 2d 259 (Fla. App. 1977), *cert. granted*, No. 51,588 (Fla., Jan. 20, 1978) (emphasis added). A copy of *Mills* is attached hereto at App. 20a. See App. 26a:

15. The General Assembly of the Presbyterian Church US has officially adopted several declaratory statements construing and interpreting the Book of Church Order. Among those declarations may be found the following:

A. That the Book of Church Order makes no provision for unilateral withdrawal of a church to autonomy or independence.

B. That disposition of the property of a particular church rests in the will of the congregation of that church. *The congregation is that body of persons recognized as*

Citing the "neutral principles" language from the *Hull* decision, *see* App. 13a, the Georgia Supreme Court upheld the trial court's ruling that "legal title to all the church property of the Vineville Presbyterian Church is vested in the local church congregation represented by the [Respondents]." *See* App. 16a. Yet the Georgia courts never explained how a determination that title was in the local church could be dispositive of this case. The crux of the instant dispute is *which* faction represents the local church. This is the type of "quintessentially religious controvers[y] whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church." *Serbian Eastern Orthodox Diocese, supra*, 426 U.S. at 720. Thus, the Georgia courts erred in not accepting the church court's designation of Petitioners as the "true congregation." Although in this case deference to the church court would determine the ultimate issue of which group had the right to control the church property, "the civil courts must accept that consequence as the incidental effect of an ecclesiastical

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*members of that particular church by the respective courts of the church.*

C. That the beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation with respect to such property may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance *nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church US as established by the constitution of such church.*

*Accord, e.g., Presbytery of the Covenant v. First Presbyterian Church*, 522 S.W.2d 865, 868 (Tex. Civ. App. 1977) (TPCUS Book of Church Order gives Presbytery power to "redress whatever the Session may have done contrary to order").

determinaiton that is not subject to judicial abrogation \* \* \*." *Id.*

During the past year several other courts have held precisely contrary to the Georgia courts on this point, ruling that civil courts *must* defer to the decision of a hierarchical church court under circumstances identical to the instant case. Thus, in *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865 (Tex. Civ. App. 1977), a majority of a local congregation sought to withdraw from the Presbyterian Church in the United States. The Texas court reviewed the TPCUS system of church government, and Book of Church Order, and concluded that "it is undisputed and has been uniformly recognized by the decisions that [TPCUS] is \* \* \* connectional or hierarchical, at least as to ecclesiastical matters and church government." *Id.* at 868, 870. In the *Presbytery of the Covenant* case, as in the instant case, a Commission of the Presbytery, appointed pursuant to the Book of Church Order, had concluded that the congregation's resolution of withdrawal "was null and void," and that the members of the congregation who remained loyal to TPCUS constituted the true congregation of the local church. *Id.* at 869-870. Under these circumstances, the court held that it must defer to the church governing body concerning the issue of which of the two factions is the "representative and successor to the church as it existed prior to the division." *Id.* at 871. The court noted that the fact that the local church owns the property is irrelevant in cases such as this, since the true question is which faction constitutes the local church. *Id.* at 872. "It is a simple question of identity," the court concluded, and not one which can be resolved by looking at such "neutral principles" as an analysis of deeds or formal title. *Id.* at 871. *Accord, State ex rel. Morrow v. Hill*, 51 Ohio St. 2d 74, 364 N.E.2d 1156, 1158 n.2 (1977):

The issue of title is not determinative of the present issue. Moreover, neither party disputes that title is



in the local church. Still unresolved would be the underlying and determinative issue of this case: which faction is rightly the local church?

In another recent decision directly contrary to the Georgia courts' rulings in the instant case, *First Presbyterian Church v. United Presbyterian Church in the United States*, 430 F. Supp. 450 (N.D.N.Y. 1977), the court again was faced with a local church seeking to withdraw from the national church. A commission of the national church had ruled that the local church majority<sup>10</sup> seeking to withdraw should "cease to act" on behalf of the local church. *Id.* at 452-453. After reviewing this Court's decisions in *Watson* and *Serbian*, the court in *First Presbyterian Church* held that "the inquiry of this court may not extend beyond a determination that the dispute herein arose in a hierarchical church; that UPCUSA has established its own rules and tribunals for the adjudication of disputes and the discipline of its subordinate bodies; that ecclesiastical action has been taken by the appropriate judicature; and that the actions and decisions thus taken are binding upon the civil courts." *Id.* at 456.

On the other hand, several other state courts, purporting to following a "neutral principles" analysis, have interpreted *Hull* and *Serbian* in the conflicting manner of the Georgia courts in the instant case. One case directly in point is *Mills v. Baldwin*, *supra* note 9. The facts in that case are virtually identical to those here. The trial court in *Mills*, which also involved an attempted withdrawal from TPCUS by a local church, reviewed the hierarchical structure and rules of TPCUS and concluded that the civil courts must defer to the church court determination that the minority faction remaining loyal to

<sup>10</sup> The majority vote for withdrawal in the *First Presbyterian Church* case was 223 to 3, with 9 abstentions. 430 F. Supp. at 452.

TPCUS represents the true congregation. See App. 20a, where the unpublished trial court decision is printed. The Florida appellate court reversed, in a 2-1 opinion, based upon its view of "neutral principles" of state property law. The majority rejected the dissenting judge's view that the true issue in the case is which faction in fact constitutes the local church, and that the civil courts must defer to the church court ruling on this point. 344 So. 2d at 267-268. Indeed, contrary to this Court's pronouncements in *Serbian* (426 U.S. at 710-711) and *Kedroff* (344 U.S. at 116), the Florida Court of Appeals suggested that the true meaning of this Court's recent decisions is that the states are no longer required to follow the *Watson v. Jones* deference rule. See 344 So. 2d at 267 n.23. The Supreme Court of Florida has granted certiorari to review the Court of Appeals decision. See note 9, *supra*.

The Supreme Court of Appeals of West Virginia, in another post-*Serbian* decision, apparently has adopted the rule that it will defer to hierarchical church court decisions *only* when "a case is not susceptible to the application of completely neutral principles of law." *Board of Church Extension v. Eads*, 230 S.E.2d 911, 919 n.6 (W. Va. 1976).

In *Kelley v. Riverside Blvd. Independent Church of God*, 44 Ill. App. 3d 673, 358 N.E.2d 696 (1976), the court expressly noted the conflict between state courts concerning whether this Court's decisions (including *Serbian*), taken together, require deference to church court determinations. 358 N.E.2d at 702. The court in *Kelley* rejected the contrary state court decisions interpreting the First Amendment to require such deference, concluding that "we are not persuaded that these decisions represent the better view or that they are mandated by the first amendment." *Id.*

It is evident that the conflict existing in lower court decisions subsequent to *Serbian* is attributable to judicial



confusion concerning the concept of "neutral principles." Different state courts have chosen—apparently arbitrarily—between a "deference" approach and a "neutral principles" approach, and the choice of approach predictably determines the outcome of the case. See McKeag, *The Problem of Resolving Property Disputes in Hierarchical Churches*, 48 PA. BAR ASS'N Q. 281, 286 (1977). Numerous commentators have pointed out the uncertainty that remains in this area of the law after *Serbian* concerning whether the neutral principles approach retains any applicability to this type of church property dispute, where there has been a determination by a hierarchical church body. See, e.g., Note, *Serbian Eastern Orthodox Diocese v. Milivojevic: The Continuing Crusade for Separation of Church and State*, 18 WM. & MARY L. REV. 655, 676 (1977) ("The exact limits of authorized review [of ecclesiastical decisions] remain unclear \* \* \*. Clarification of the holding [in *Serbian*] is necessary \* \* \*"); 1977 WISC. L. REV. 904, 924 ("There is no unanimity of opinion on how the first amendment ought to be construed in its application to church disputes, and its past interpretations by the Court have not always been consistent"); 1977 UTAH L. REV. 138, 148-149 ("Uncertainty in the application of *Serbian* also arises because the Court did not expressly make *Serbian* the exclusive approach. The Court did not explicitly reject 'the formal title,' 'neutral principles,' or 'state statute' analysis, nor did it give guidance concerning the permissible scope of these or other approaches"). But see 45 FORDHAM L. REV. 992, 1001 (1977) ("Thus a rule emerges [after *Serbian*] as to hierarchical churches that is clear and definitive—the decision of a hierarchical church tribunal is final. Neutral principles of law may not be used in the future to review those decisions \* \* \*").

It should be noted that the lower courts' determination in the instant case would be incorrect *even if* a "neutral principles" approach were appropriate. First, as dis-

cussed at page 10, above, the Georgia courts' conclusion that formal title rests with the local church is simply irrelevant to the issue presented here: which faction represents the local church?

Second, the decisions below cannot properly be upheld by resort to a "neutral principle" of "majority rule." For the civil courts to impose such a principle upon hierarchical churches—whose fundamental documents provide for a different method of organization—would be an extreme and unjustified interference with the church members' free exercise of religion, as guaranteed by the First Amendment. "[I]t is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads." *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 122 (1952) (Frankfurter, J., concurring).

The importance of this issue and the impact of its resolution can hardly be overstated. The fact is that most churches within TPCUS are quite small—47 percent of its congregations have less than 100 members, and 12 percent have 24 members or less. See Brief of Amicus Curiae The Presbyterian Church in the United States in Support of the Grant of Certiorari. A principle of "majority rule" would invite serious abuse, by allowing a handful of people to purport to join a local church and then to withdraw that local church from the national church and appropriate to another denomination—or conceivably even to themselves—the extremely valuable church property. It is not being overly imaginative, particularly where church property is valuable and the congregation is small, to foresee this happening with increasing incidence if the determinations of national churches are disregarded by our civil courts.

Finally, to the extent that a "neutral principles" approach requires or allows consideration of state statutes,

Section 22-5507 of the Georgia Code provides that title to property may be held by churches or religious societies, and that such property "shall be fully and absolutely vested in such church or religious society \* \* \* according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively" (emphasis added). The Georgia Supreme Court, however, rejected Petitioners' argument that this statute also requires the civil courts to defer to the decision of a church governing body concerning which faction is the true local church and thus is entitled to control its property. App. 14a-15a.

It is especially important that this Court resolve quickly the conflict and uncertainty in the lower courts concerning application of the *Serbian* principles to church property disputes such as the instant case. The Presbyterian Church in the United States is only one of many broad-based, or national, hierarchical churches. See note 2, *supra*. Each of these churches has a detailed constitution or rules which seek to govern the relationship between the local church units and the national church. Given the present state of confusion in the law, these national rules and constitutions are subject to widely varying interpretation and enforcement in the different states.

Moreover, it should be emphasized that these issues are not merely of academic concern. The case books are filled with literally hundreds of such intra-church property disputes,<sup>11</sup> and new cases calling for the resolution of these issues continue to arise frequently.<sup>12</sup> TPCUS alone has

<sup>11</sup> See Annot., *Determination of Property Rights Between Local Church and Parent Church Body: Modern View*, 52 A.L.R.3d 324 (1973) (103-page review of decisions, focusing on cases arising in hierarchical churches, especially since *Hull*).

<sup>12</sup> Several unreported cases raising identical issues concerning local churches' attempted withdrawals from national hierarchical churches are currently awaiting decision in state courts. See, e.g.,

been the subject of a series of conflicting decisions during the past few years concerning attempts by local congregations to withdraw from the national church. See, e.g., *Presbytery of the Covenant v. First Presbyterian Church*, *supra*, 552 S.W.2d at 870-871 (church court decision designating true congregation granted deference pursuant to "neutral principles" approach); *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442, *cert. denied*, 423 U.S. 913 (1975) (relying on *Hull*'s "neutral principles," court accepted findings of the appropriate church judicatory as to identity); *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston*, 531 S.W.2d 301 (Tenn. App. 1975) (implied trust found in favor of general church); *Baldwin v. Mills*, *supra*, 344 So. 2d at 264-267 (formal title doctrine utilized pursuant to "neutral principles"); *Jones v. Wolf*, App. 11a (same).

We will argue, if certiorari is granted, that the doctrine of "neutral principles" comes into play *only if* no church adjudicatory procedures are available or have been followed—unlike the situation here where the proper church "court" has ruled and the Respondents have failed to appeal as provided for in the governing church documents. If a civil court could ignore a properly-arrived-at ecclesiastical finding as to which group constitutes a congregation, and could instead follow an "alter-

*Winklesley v. Trinity Presbyterian Church*, No. CV-77-542 (Mont. Cy. Ala. Cir. Ct., filed June 23, 1977) (attempted withdrawal from TPCUS); *United Presbyterian Church in the United States v. Covenant United Presbyterian Church*, No. 77-4645-19 (Pinellas Cy. Fla. Cir. Ct., filed May 20, 1977) (attempted withdrawal from United Presbyterian Church); *Presbytery of Riverside v. Blackstone*, Nos. I-13680 (Master file), I-12302 (Riverside Cy. Calif. Super. Ct., Apr. 21, 1977), *appeal docketed*, 4th Civ. No. 19079 (Calif. Ct. App., 4th App. Dist., June 16, 1977 (same)); *Protestant Episcopal Church v. Barker*, Nos. C 188907, C 189571, C 189572, C 190652 (Los Angeles, Calif. Super Ct., filed February 1977) (attempted withdrawals from Protestant Episcopal Church by four separate local congregations).

"neutral principles" of law to decide the very same question, the civil court would have abridged the First Amendment separation of church and state just as egregiously as if it had directly overruled the ecclesiastical finding.

It is sufficient for present purposes, however, merely to point out the utter confusion in the courts below and the extreme importance of having this First Amendment issue definitively decided by this Court.

### CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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*Attorneys for Petitioners*

## APPENDIX



1a

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

Civil Action File 45787 D-2

Bibb Superior Court  
In Equity

DECREE

This unfortunate litigation is between two factions of the Vineville Presbyterian Church, Macon, Georgia, plaintiffs being the minority faction. In their class action plaintiffs contend that the Presbyterian Church in the United States (TPCUS) is a Hierarchical Church with a connec-tional form of government in which they were members and the Vineville Presbyterian Church (VPC) a Local Unit for many years; that the defendants have with-drawn from TPCUS and have notified the Macon-Augusta Presbytery of the adoption of a resolution adopted by a majority of the congregation of the VPC purporting to withdraw the Local Church Unit from TPCUS. Its pastor withdrew contemporaneously from the jurisdiction of said church. Defendants then united with the Presby-terian Church in America (TPCA).

Plaintiffs allege that a commission duly authorized by the Church Courts of TPCUS pursuant to its Book of Church Order decreed that defendants and the class they represent are no longer officers and members of TPCUS and that plaintiffs and the class they represent were the true members of said church. No appeal was taken to any higher Church Court of TPCUS.

Plaintiffs contend that they are the proper trustees of VPC, that defendants having withdrawn from TPCUS

and united with a different church organization are acting illegally in continuing over plaintiffs' protest to maintain possession, dominion and control over the Church Edifice and other properties of VPC to the exclusion of Plaintiffs as true representatives and trustees of TPCUS.

Plaintiffs seek declaratory judgment adjudicating their rights in the premises and for a permanent injunction preventing defendants and the class they represent from continuing to use church property of VPC in any manner other than as a unit of TPCUS and from any dominion over said property in such manner as to prevent plaintiffs and the class they represent from utilizing and operating the same as a Local Unit of TPCUS. Detailed appropriate prayers for relief accompany the Complaint.

The defendants filed an Answer containing Seven Claimed Defenses.

The First Defense asserts that the Complaint fails to state a proper claim upon which relief can be granted.

In the Second Defense defendants deny that TPCUS is a Hierarchical Church although they admit it is generally recognized as having a "connectional form of government." In this Defense they respond to the factual allegations of the Complaint generally admitting the events and allegations set out therein but factually asserting that defendants and their class had a right to withdraw from TPCUS upon appropriate resolution of the Congregation as was done, that the Church Court of TPCUS did not have authority with regard to the property of VPC nor any right to name any of plaintiffs as trustees of VPC as it tried to do, that defendants have lawful possession, dominion and control over the VPC property and that they and the VPC are properly affiliated with TPCA. Defendants deny plaintiffs are entitled to any relief.

The Third through Seventh Defenses raise a number of assertions which will not be discussed in detail except to say that defendants contend that the title to the church property of VPC belongs to this local church as a corporation free of any control from plaintiffs as representatives of their class or as trustees of TPCUS. Defendants set out in detail the history of title acquisition by VPC.

Defendants pray that the prayers of plaintiffs be denied and that an instrument filed by plaintiffs purporting to constitute them as trustees of VPC be declared void and of no effect by the Court.

The Parties through their Counsel of record entered into a written stipulation of facts which was approved by the Presiding Judge and filed as part of the record in the case. The Stipulation deals comprehensively with the facts essential to a determination of the matter and allows the Court to proceed with a final decision without the intervention of a jury. No additional evidence is deemed necessary by the Court and the controversy is ripe for final determination.

The Stipulation of Facts is by reference incorporated into this Order and adopted in toto as findings of fact by the Court.

In summary, the Court finds the following facts.

VPC was organized in 1904 and its membership duly submitted a petition to the Augusta-Macon Presbytery of TPCUS and was by it established as a Member-Unit of that Presbytery.

TPCUS has a connectional form of government and organization as set forth in the "Book of Church Order," the "Fourteenth Printing 1972," being the Book in effect in 1973 when the events under investigation occurred. Generally, TPCUS is organized so that a Local Unit is governed by its Session; the Sessions of the Local Church

are governed by what is known as a Presbytery which governs several Local Church Units in a particular area; the Presbytery is governed by a Synod which is over all Local Units and Presbyteries within a State; and the Synods are governed by the General Assemblies [sic] which in turn governs all Local Church Units, Presbyteries and Synods in the United States.

Title to the VPC property was acquired by conveyances shown as Exhibits B, C, C1, D, E, F, G, H and I (stipulation of facts) all being to named trustees of VPC or simply to VPC. VPC was incorporated in 1915 and its charter has since been revived and renewed (Exhibits J and K). Since 1908 VPC has repeatedly borrowed money on its property under authority of resolutions adopted by its congregation evidenced by security deeds signed by trustees of VPC.

In 1973 plaintiffs and defendants and the classes they represent were members of VPC which in turn was a Member-Unit of the Augusta-Macon Presbytery of TPCUS. On May 27 of that year while a quorum of the congregation of VPC was present, members of the class represented by defendants presented a resolution (Exhibit R) duly adopted by 165 (defendant class members) voting in favor while 94 (plaintiff class members) voted against it. This resolution purported to separate VPC and its property from any affiliation with the Augusta-Macon Presbytery and TPCUS and to vest all control with the local church as an independent, self-governing church pending formation of a new Presbyterian organization and denomination different in certain particulars from TPCUS. The Augusta-Macon Presbytery was notified of this action on May 27, 1973 (Exhibit S) and the local pastor of VPC also advised of his relinquishment of membership in the Presbytery (Exhibit T).

Thereupon the Augusta-Macon Presbytery declared plaintiffs and their class the true congregation of VPC

and withdrew from defendants their class and the pastor all authority derived from TPCUS and purported to forfeit all their ecclesiastical privileges and rights of property of the congregation (Exhibit U).

Thereafter, defendants and their class in VPC by appropriate vote united with the Central Georgia Presbytery of the Presbyterian Churches of America, which is not affiliated with TPCUS in any manner.

Since May 27, 1973, defendants have al [sic] all times retained possession, dominion and control of all property and assets of VPC to the complete exclusion of plaintiffs and the class they represent as a Local Unit of TPCUS and plaintiffs have carried on their church activities elsewhere than at the VPC location of 2193 Vineville Avenue, Macon, Georgia.

Defendants have caused the names of plaintiffs and their class to be stricken from the rolls of VPC and have so notified plaintiffs (Exhibit V).

Subsequent to the Book of Church Order "Fourteenth Printing 1972," changes were made in the Book of Church Order by the 112th General Assembly TPCUS being the "Fifteenth Printing 1975" by the addition of a new section added to Chapter 4 entitled "The Organization of a Particular Church" which new section states that the relationship to TPCUS of a particular church can be severed only by constitutional action on the part of the appropriate Presbytery (Exhibit W).

The United Presbyterian Church in the United States of America is a Presbyterian body which is not connected with TPCUS and which has its own rules dealing with the property of local churches (Exhibit X). Moreover, the United Methodist Church has its Book of Discipline by which it is governed, including rules dealing with church property (Exhibit Y). The Methodist Church is in no way affiliation [sic] with TPCUS.



The defendants do not claim any right of possession of any church property by virtue of any claim arising under *Ga. Code Ann.* Sec. 22-5504 or 22-5506.

It is agreed that the Vineville Presbyterian Church, a non-profit Georgia Corporation shall be bound by the judgment to be rendered in this case to the same extent as if made a party.

The Court finds that the controversy is appropriate for Declaratory Judgment procedure in that a bona fide controversy exists and the rights of plaintiffs in and to VPC property ought to be determined. *Ga. Code Ann.* Sec. 110-1101 and 1102.

The Court finds that from the point of view of the plaintiffs and the defendants the proceeding is a proper class action under *Ga. Code Ann.* 81A-123(a)(2). Each side fairly represents the class it purports to represent and no additional parties are essential for a fair, full determination of the issues presented.

This controversy involves a dispute with respect to a connectional or hierarchical rather than a congregational church denominational organization. It is in the former type of church structure that difficulties arise as to the right to control church properties as between the central church organization (or a faction claiming under it) and the local church congregation when the latter become dissatisfied with the affiliation and seek for whatever reason to withdraw. Both sides through their able attorneys trace well the history of church litigation in this area in the English as well as American States and Federal appellate court decisions. However, in the opinion of this Court an examination of the following cases is dispositive of the legal issues: *Presbyterian Church in the U.S. v. Eastern Heights Presbyterian Church*, 224 Ga.61, rev'd. 393 U.S. 440; *Presbyterian Church in the U.S. v. Eastern Heights Presbyterian Church*, 225 Ga.

259; *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367; and *Carnes v. Smith*, 236 Ga. 30.

In the *Eastern Heights* litigation the U.S. Supreme Court held that civil courts could resolve property disputes, but that the United States Constitution forbids them from determining ecclesiastical questions in the process. Civil courts must resolve church disputes on neutral principles of law developed for use in all property disputes. This holding emasculated the former Georgia rule in connective form church cases that there was an implied trust on local church property for the benefit of the general church, but that as a part of this rule the implied trust was conditioned on the general church adhering to its tenets of faith and practice existing at the time of affiliation by the local church. Thereafter, in final disposition of that case the Georgia Supreme Court held that the entire trust theory must fall, condition and all. That theory having fallen and no other basis for a trust in favor of the general church being found in the deeds to the property, or otherwise implied under the statutes, *or required by the constitution of the general church* the property was awarded to the local churches.

In the *Carnes* litigation (a 4-3 decision) the Court considered a Methodist church schism which fit snugly in one of the exception niches underlined above through which the association with a central connectional church by a local church could as a matter of doctrine, law or constitution of such central (general) church necessarily imply a trust. More than a mere connectional relationship between the local and general church must exist.

Just what criteria could be used to resolve property disputes in this area of litigation was clarified to a degree in the *Churches of God* case by the Supreme Court of the United States by denial of review of a Maryland Court of Appeals decision on the basis of civil property

law rules which, like Georgia since the *Presbyterian Church* cases, has no implied trust doctrine. Inquiry was not made into religious doctrine which would violate the First Amendment. The Maryland Court looked to the language of the deeds, applicable state statutes regarding religious corporations, the connectional church constitution and the corporate charters of the local churches. This practice was adopted by the Georgia Supreme Court in *Carnes*.

However, upon application of these criteria, the decision in *Carnes* went off in the opposite direction and the majority of the Court, applying Code Sec. 22-5507 and 5508, found the Book of Discipline of the United Methodist Church to require that title to all real property owned or acquired by a local church shall be held for the use and benefit of the local church and the United Methodist Church. The Book of Discipline of the Church went on to provide that the absence of a suggested trust provision would not relieve the local church of connectional responsibility and accountability to the United Methodist Church provided certain conditions (i.e. use of name of the United Methodist Church, acceptance of pastorate of ministers appointed by the central church, etc.) were met.

Applying the neutral principles of law applicable in Georgia to the association between the local church in *Carnes* with the United Methodist Church the Court found an implied trust intended by the founders of the local church. By application of the Book of Discipline to the relationship, the Court found it would not be fair to have a local church take advantage of the use of polity, name, finances and other aspects of its operation without being bound by the implied trust provisions of its constitution and rules. Citing authority from other jurisdictions, the majority of the Court ruled the local church may not participate in the functioning of the central church, yet disclaim affiliation so as to shield from

obligation valuable property acquired by the local church before or during affiliation.

Applying these rules to the controversy at hand, there is nothing in the deeds, the applicable Georgia statutes regarding religious corporations, TPCUS Book of Church Order or Discipline, or the Corporate Charter of the VPC to indicate any express or implied trust in favor of any group other than the local congregation of VPC. Moreover, Section 6-2 of the Book of Church Order of TPCUS provides specifically that a church corporation can elect trustees to hold and manage local church property and can buy, sell and mortgage such property under authority of such corporation. This policy is inconsistent with trusteeship on behalf of the central church but is consistent with the way defendants and VPC have acted in relation to TPCUS as shown in the record before the Court. No one other than local members paid any funds to acquire the VPC properties.

This case falls squarely under the authority of the final chapter of the *Eastern Heights* litigation at 225 Ga. 259.

This Court concludes as a matter of law that legal title to all the church property of VPC is vested in the local church which is represented by defendants. TPCUS had no authority by resolution to constitute plaintiffs as trustees or as the true congregation for the purpose of creating a trust relationship with respect to the church property of VPC when none previously existed, expressly or by implication and insofar as such action (Exhibit F) [sic] sought to confer any rights of property upon plaintiffs or those they represent, such declaration is declared void and of no force and effect. The 1975 change in the Book of Church Order of TPCUS may not be considered.

It is not deemed necessary to comment upon many other points and issues sought to be raised by counsel in their briefs.



10a

Final Judgment on the merits of the Complaint is granted to defendants and against plaintiffs. The Complaint is dismissed and defendants are discharged with their costs.

So ordered this 29<sup>th</sup> day of September, 1977.

/s/ James B. O'Connor  
JAMES B. O'CONNOR  
Judge  
Oconee Judicial Circuit  
Presiding in Bibb Superior Court

Filed Sep. 30, 1977, Clerk's Office, Superior Court,  
Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

11a

IN THE SUPREME COURT OF GEORGIA

Decided: Apr. 4, 1978

33126

JONES ET AL.

v.

WOLF ET AL.

NICHOLS, Chief Justice.

This is a title dispute arising over which faction retains the property in a church schism.

On May 27, 1973, a resolution was presented to the congregation of the Vineville Presbyterian Church of Macon seeking to withdraw the church and its property from any affiliation with the Augusta-Macon Presbytery and the Presbyterian Church in the United States and to become an independent, self-governing church pending formation of a new Presbyterian organization and denomination. With a quorum present, the resolution carried by a vote of 165 to 94.

On the same day the Augusta-Macon Presbytery was notified of the resolution, and the pastor of the Vineville church advised the Presbytery of his relinquishment of membership in the Presbytery. Subsequently, a commission of the Presbytery declared those voting in the minority to be the true congregation of the Vineville church and withdrew from the majority as well as the pastor all authority derived from the Presbyterian Church in the United States.

Thereafter, the majority (appellees in the present case) united with the Central Georgia Presbytery of the Pres-

byterian Church of America, which has no affiliation with the Presbyterian Church in the United States.

Since the vote to withdraw from the Presbyterian Church in the United States, the appellees have at all times retained possession and control of all property and assets of the Vineville church and have caused the names of the minority (appellants in the present case) to be stricken from the church rolls.

In an effort to have the property issue resolved in federal court, the appellants filed an action in the United States District Court for the Middle District of Georgia, which action was dismissed for lack of jurisdiction. That dismissal was affirmed by the United States Fifth Circuit Court of Appeals. *Lucas et al. v. Hope et al.*, 515 F2d 234 (1975); rehearing denied 523 F2d 1055 (1975). The United States Supreme Court denied certiorari. *Lucas et al. v. Hope et al.*, 424 US 967 (1976).

Thereafter, appellants brought this action seeking declaratory judgment adjudicating their rights and seeking a permanent injunction preventing appellees from continuing to use the church property in any manner other than as a unit of the Presbyterian Church in the United States. Neither the Augusta-Macon Presbytery nor the Presbyterian Church in the United States is a party to the action.

The case was submitted on briefs and stipulated facts and was decided by the court without the intervention of a jury. After examining all facts essential to the making of a determination, the trial court ruled in favor of appellees and dismissed appellants' complaint. That judgment is affirmed.

Since *Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, 393 US 440 (89 SC 601, 21 LE2d 658) (1969), civil courts have been forbidden, under First

Amendment principles as applied to the states by the Fourteenth Amendment, from resolving church property disputes on questions of an ecclesiastical nature. That case was decided on certiorari from this court and on remand this court abandoned in its entirety the theory that imposed an implied trust on property of a local connectional church for the benefit of the general church, conditioned upon adherence to tenets of faith. *Presbyterian Church in the United States et al v. Eastern Heights Presbyterian Church*, 225 Ga. 259 (167 SE2d 658) (1969). The decision of the Supreme Court of the United States stated there are neutral principles of law, developed for use in all property disputes, which can be applied in resolving church property disputes without resolving underlying controversies over religious doctrine.

In *Carnes v. Smith*, 236 Ga. 30 (222 SE2d 322) (1976), this court examined developing case law to determine the "neutral principles of law" to be applied in settling church property disputes. *Carnes* relied upon the case of *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 US 367 (90 SC 499, 24 LE2d 582) (1970), in which the United States Supreme Court sanctioned examination of language in deeds, applicable state statutes regarding religious corporations, provisions in church constitutions, and the corporate charter of the local church as "neutral principles of law" that appropriately may be considered. The general church constitution in the case at bar is the *Book of Church Order*, Fourteenth Printing, 1972, which was in effect at the time this dispute arose.

The appellants enumerate one error: The trial court erred in finding in favor of the appellees-defendants and in dismissing the complaint of the appellants-plaintiffs.

Appellants contend that because it is stipulated that the appellants and the class they represent are those who remain loyal to the Presbyterian Church in the

United States, it follows therefore that they are entitled to the property. In reality, appellants merely are seeking to return to the implied trust theory rejected by the court in *Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church*, 225 Ga. 259 (167 SE2d 658) (1969) and are seeking to abandon entirely the "neutral principles" enunciated in *Carnes*. Under *Carnes* more than a mere connectional relationship between the local and general churches must exist to give rise to property rights in the general church.

Applying *Carnes*, does more than a mere connectional relationship between the local and general churches exist according to the record? An examination of the deeds, from the first (1908), shows with but one exception that the grantees were named trustees for the Vineville church taking for the proper use of the Vineville Presbyterian Church. The one exception is a deed naming the Vineville church itself as grantee. There is no language giving the general church any interest in the property. An examination of security deeds executed on behalf of the church (the church borrowed money on numerous occasions) fails to show any grant or acquiescence by any party other than the trustees acting for the Vineville church.

The corporation charter of April 29, 1915, and subsequent revivals, fail to show any interest in the corporation other than that of the congregation.

Appellants rely heavily on Code Ann. §§ 22-5507 and 22-5508 which mandate that property conveyed to a church is vested according to the mode of church government or such rules of discipline exercised by such churches or religious societies respectively, and upon *Carnes*, which held that "The statutes thus mandate that the church property be held according to the terms of the church government." 236 Ga. at 38. However, those statutes do not purport to give a general church

any rights in local church property other than those rights set forth in the documents of church government. The *Book of Church Order*, Chapter 6, entitled "Incorporation and Property of a Particular Church," Sections 6-1, 6-2 and 6-3, fails to give rise to an express trust or any implied trust as defined by the General Assembly. Section 6-2, dealing with incorporated churches within the Presbytery, specifically provides that a church corporation may elect officers to hold and manage local church property and may buy, sell and mortgage such property under the authority and direction of such corporation, the membership of which includes every member of the congregation.

Appellants cite other sections of the *Book of Order* pertaining to church courts. These deal with faith and the internal structure of the church but do not deal with property rights.

This case is distinguishable from *Carnes*, in which this court found an implied trust in favor of the general church, the United Methodist Church, because its book of discipline provided that "title to all real property now owned or hereafter acquired by an unincorporated local church, . . . shall be held by and/or conveyed to its duly elected trustees . . . and their successors in office, . . . in trust, nevertheless, for the use and benefit of such local church and The United Methodist Church." No language of similar import is to be found in the Presbyterian *Book of Church Order* contained in the stipulations of the parties in the present case.

The trial court found that the Vineville Presbyterian Church had been a connectional church within the Augusta-Macon Presbytery and the Presbyterian Church in the United States but correctly held that "more than a mere connectional relationship between the local and general church must exist" to give rise to property



rights in the general church. See *Carnes v. Smith*, 236 Ga. 30 (222 SE2d 322) (1976).

The trial court concluded that as a matter of law, the legal title to all the church property of the Vineville Presbyterian Church is vested in the local church congregation represented by the appellees.

The single enumeration of error is without merit.

*Judgment affirmed. All the Justices concur, except Undercofler, P.J., who concurs in the judgment only.*

# SUPREME COURT OF GEORGIA

#45787-D-2

ATLANTA, April 4, 1978

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

R. W. JONES, SR., et al.

v.

CHARLES T. WOLF, et al.

This case came before this court upon an appeal from the Superior Court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Undercofler, P.J., concurs in judgment only.

## SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA 4/21/78

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Filed May 11, 1978, Clerk's Office, Superior Court of Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

Witness my signature and seal of said court hereto affixed the day and year last above written.

/s/ Joline B. Williams  
Clerk

18a

CLERK'S OFFICE  
SUPREME COURT OF GEORGIA

Serial No. 215

Decision Date: 4/4/78

Judge: C. J.

Case No. 33126

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

MOTION FOR REHEARING

Denied—4/19/78

19a

BIBB SUPERIOR COURT

No. 45787-D 2

R. W. JONES, SR., et al.

vs.

CHARLES T. WOLF, et al.

JUDGMENT

GEORGIA, BIBB COUNTY

IN THE SUPERIOR COURT OF SAID COUNTY:

The attached Remittitur having been received by the Court;

It is, thereupon, ordered that said Remittitur be entered on the minutes, and Judgment of the SUPREME COURT—be made the Judgment of this Court, and that the APPELLANT-APPELLEE, recover of APPELLANT-APPELLEE, for use of the officers of court the sum of \$\_\_\_\_\_ Costs, to be taxed by the Clerk.

In open Court this 10 day of May, 1978.

/s/ [Illegible]  
Judge  
Superior Courts  
Oconee Circuit

Filed May 11, 1978, Clerk's Office, Superior Court of Bibb County, Georgia.

/s/ Carolyn Hattaway, D.C.

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
IN AND FOR MADISON COUNTY, FLORIDA

Civil Action No. 73-100

CRAIG MILLS, et al.,  
Plaintiffs,

vs.

JOHN P. BALDWIN, et al.,  
Defendants.

FINAL JUDGMENT

THIS CAUSE came on for non-jury trial before the Court on Plaintiff's First Amended Complaint and upon the Counterclaim of the individual Defendants. The Plaintiffs are Trustees of the Presbytery of Florida of the Presbyterian Church in the United States; members of the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; and persons recognized by the Presbytery of Florida of the Presbyterian Church in the United States as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida.

The Defendants are John Baldwin, individually and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; and other persons claiming to be members of the Session of the Madison Church. They will hereinafter be referred to as "individual Defendants." The Florida First National Bank at Madison, Florida is also a party defendant, and will hereinafter be referred to as "the Defendant Bank."

Suit was brought by Plaintiffs herein in their official capacities as hereinabove set forth and on behalf of the

Presbyterian Church in the United States which is an unincorporated ecclesiastical organization devoted to the Presbyterian faith.

This controversy revolves about the ownership of the real property upon which certain church buildings are located, together with certain personal property. The Plaintiffs allege that the Madison Presbyterian Church in Madison, Florida, hereinafter called "the Madison Church," having been previously organized as early as 1840, was thereafter formed and constituted as a church on or about December 4, 1861 according to the ordinances and government of the Presbyterian Church in the United States, hereinafter referred to as the "Presbyterian Church US." Plaintiffs further allege that the real property acquired by the Madison Church through the years has been continuously used for the purpose of providing a home for the minister, and for the common use by members of the Madison Church as a place of divine worship subject always to the government and discipline of the Presbyterian Church US.

Plaintiffs assert that the beneficial ownership of the property of the Madison Church rests with Plaintiffs and those members of the congregation of said church who remain faithful to the body of the Presbyterian Church US and that under the government and discipline of the Presbyterian Church US, there can be no such thing as a unilateral withdrawal by a congregation from the Presbyterian Church US without consent of the Presbytery in whose geographical bounds the individual church is situated. Plaintiffs sought injunctive and general relief.

The individual Defendants-Counterclaimants generally denied that the Madison Church was formed according to the ordinances and government of the Presbyterian Church US and denied that the Madison Church was subject to and governed by the rules, doctrine and discipline of the Presbyterian Church US. The individual Defend-



ants-Counterclaimants also prayed for injunctive and general relief.

The Defendant Bank by answer to the Complaint filed by Plaintiffs affirmatively alleged that certain bank accounts were maintained by the Madison Church in that bank, and the Defendant Bank asserted that it would abide by any orders entered by this Court with respect to the ownership of any funds in the bank's possession.

Upon examination of the pleadings, and after consideration of the testimony and exhibits offered at the trial of this cause, and having heard argument of counsel for all parties and the Court having read and considered the Briefs filed on behalf of the Plaintiffs and individual Defendants and being otherwise fully advised in the premises, the Court makes the following findings of fact:

1. The Presbyterian Church US is an unincorporated ecclesiastical organization governed by the Presbyterian system of government comprising approximately 950,000 members located primarily in the Southeastern section of the United States. Its constitution consists of its doctrinal symbols embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with the Book of Church Order, which comprise the Form of Government, the Rules of Discipline, and the Directory of Worship.

2. The Presbyterian Church US is governed by Presbyters or Elders, gathered in Church Courts, each with specific jurisdiction. It was organized on or about December 4, 1861, at which time it was called "the Presbyterian Church in the Confederate States of America." Under its form of government, the entire governmental power of the denomination is vested in church courts, or judicatories, consisting of the Session which has jurisdiction over affairs pertaining to a single congregation; the Presbytery having jurisdiction over a certain district comprising sev-

eral congregations; the Synod having jurisdiction over a still larger district including several Presbyteries; and the General Assembly having jurisdiction over the affairs pertaining to the entire church.

3. The Presbyterian Church US is not congregational in organization, but is clearly hierarchical or representative. *St. Johns Presbytery v. Central Presbyterian Church*, 102 So.2d 714, *Presbytery of the Everglades v. Morgan*, 125 So.2d 762, *Froelich v. Rowley*, 102 So. 2d 720.

4. The Madison Church was formed and constituted a church on or about December 4, 1861 according to the ordinances and government of the Presbyterian Church US (previously called the Presbyterian Church in the Confederate States of America) by authority of the Presbytery. During the period between 1851 and 1965 it acquired certain real property situated in Madison County, Florida and duly recorded in the Public Records of Madison County as set forth below:

- A. Deed Book "G" at page 59
- B. Deed Book 46 at page 375
- C. Deed Book 67 at page 542
- D. Deed Book 72 at page 349
- E. Official Records Book 36 at page 77

5. The real property was acquired by the Madison Church in the name of its Trustees as provided in the Book of Church Order which authorized title to be held by either incorporated or unincorporated churches, and all of said property was thereafter used by the Madison Church for the purpose of providing a home for its minister and for divine worship.

6. All persons including the individual Defendants who were received as members of the Madison Church took

certain vows, including a vow to submit themselves to the government and discipline of the church and were also required to affirm their approval of the government and discipline of the Presbyterian Church US.

7. That the Presbytery of Florida of the Presbyterian Church US is fully authorized under the constitution of the Presbyterian Church US with authority to act on its behalf. The Presbytery is specifically clothed under the Constitution of the Presbyterian Church US with power to receive, dismiss and dissolve churches.

8. On or about March 11, 1973 the Defendant John Baldwin moderated a congregational meeting called by the Session at which a Petition was adopted by a vote of 83 in favor of said Petition and 17 in opposition thereto. The Petition was addressed to and forwarded to the Presbytery of Florida, requesting the Presbytery to dismiss the Madison Church and its property from the Presbytery of Florida and to dismiss and dissolve the pastoral relationship between the Defendant Baldwin and the Presbytery of Florida and the Presbyterian Church US. The Petition was referred by the Presbytery to a committee for further study.

9. On or about May 9, 1973 the Synod of Florida adopted a motion requiring the Presbyteries within the Synod to appoint a commission to visit, counsel, and advise any church within each Presbytery seeking to withdraw from said Presbytery. The Synod also required the Session of any such church within its bounds to notify Presbytery of its intention to hold a congregational meeting on the issue of withdrawal and to wait for a period of ninety (90) days prior to the holding of such meeting.

10. The Presbytery of Florida appointed certain persons as members of an Administrative Commission and the Commission forwarded a communication to the Madison Church convening a meeting at the Madison Church

on May 24, 1973. The individual Defendants sent a telegram to the Administrative Commission rejecting the authority of the Commission.

11. In defiance of the aforesaid action of the Synod of Florida, the individual Defendants called and held a congregational meeting on May 20, 1973 at which time a Resolution was adopted by a vote of 74 in favor and 29 in opposition by which the Madison Church purported to unilaterally withdraw from and sever all relationship with the Presbytery of Florida and the Presbyterian Church US.

12. Thereafter, on or about June 5, 1973 the Presbytery of Florida granted the request of Defendant John Baldwin and dropped his name from the roll of the Presbytery of Florida and dissolved the pastoral relationship between the Defendant Baldwin and the Madison Church and declared the pulpit vacant. The Presbytery accepted a Petition of certain loyal members of the Madison Church to be recognized as members of the Madison Church and declared and recognized Plaintiffs Beck and Ragans and others as the Ruling Elders and members of the Madison Church with full authority to assume control of the congregation and its property.

13. On or about January 29, 1974 the Presbytery of Florida denied the Petition requesting dismissal of the Madison Church from the Presbytery and from the Presbyterian Church US. No appeal or review of any kind was filed by the individual Defendants from this decision and accordingly the action of the Presbytery became final and binding under the Constitution of the Presbyterian Church US.

14. In its original Petition adopted March 11, 1973 and forwarded to the Presbytery of Florida, the congregation of the Madison Church acknowledged their affiliation with the Presbyterian Church US and expressed the view



that their Petition for dismissal should be processed in a manner consistent with the Constitution of the Presbyterian Church US.

15. The General Assembly of the Presbyterian Church US has officially adopted several declaratory statements construing and interpreting the Book of Church Order. Among those declarations may be found the following:

A. That the Book of Church Order makes no provision for unilateral withdrawal of a church to autonomy or independency.

B. That disposition of the property of a particular church rests in the will of the congregation of that church. The congregation is that body of persons recognized as members of that particular church by the respective courts of the church.

C. That the beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation with respect to such property may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church US as established by the constitution of such church.

16. The individual Defendants and other withdrawing members of the Madison Church have, since prior to the filing of this suit and continuously thereafter failed to recognize the rights of the Plaintiffs to exercise any authority or control over the real and personal property to

which Plaintiffs are entitled under the Constitution of the Presbyterian Church US and the laws of the State of Florida.

### CONCLUSION

1. This Court has jurisdiction over the parties and over the subject matter.

2. That a state may adopt any one of several approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith. *Maryland & Virginia Eldership v. Church of God at Sharpsburg*, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499; *Watson v. Jones*, 13 Wall 679, 20 L.Ed. 666; *St. Johns Presbytery v. Central Presbyterian Church of St. Petersburg*, 102 So.2d 714.

3. That a state may enforce the property decisions within a church of hierarchical polity by the highest authority which has ruled upon the dispute unless express provisions in the deed of conveyance condition the property's use in a specified manner. *Maryland & Virginia Eldership v. Church of God*, supra.

4. When a church is representative, republican, episcopalian or hierarchical in government, the church property, whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. *Nealey v. Butler*, 187 So.2d 658; *St. Johns Presbytery v. Central Presbyterian Church of St. Petersburg*, supra; *Presbytery of the Everglades v. Morgan*, 125 So.2d 762; *Froelich v. Rowley*, 102 So.2d 720.

5. In the absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclu-

sive. *Presbyterian Church v. Hull Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601, *St. Johns Presbytery v. Central Presbyterian Church*, supra.

6. Record title to the property in dispute is held by the trustees of Madison Church of Madison, Florida, for those persons recognized as members of that particular church by the respective courts of the Presbyterian Church US subject to an implied trust in said property for the uses and purposes of those belonging to and professing to be members of the Presbyterian Church US. *Presbytery of the Everglades v. Morgan*, supra; *St. Johns Presbytery v. Central Presbyterian Church*, supra.

7. When the individual Defendants withdrew from the Presbyterian Church US and organized themselves into a separate and independent organization, they carried nothing but their membership with them, and the property remained with the Presbyterian Church US through its respective courts. It made absolutely no difference that the withdrawing members constituted a majority of the congregation of Madison Church. *St. Johns Presbytery v. Central Presbyterian Church*, supra, and cases cited therein.

IT IS THEREFORE, ORDERED AND ADJUDGED that the title and possession of the real property hereinabove described is in the Madison Presbyterian Church in Madison, Florida, subject to an implied trust for the use and benefit of the Presbyterian Church in the United States. The individual Defendants have withdrawn their membership from the Presbyterian Church in the United States and may exercise no powers of office or membership therein in any way relating to the use or possession of the real property except as they may be authorized by the Presbyterian Church in the United States through its respective Church Courts.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants and all other persons in association with them having knowledge of this Judgment be and they are hereby permanently enjoined and restrained from interfering with the Plaintiffs and other loyal members of the Presbyterian Church in the United States in the use of the real or personal property of said Madison Presbyterian Church for the purpose of worship according to the doctrines, government, discipline and rules of the Presbyterian Church in the United States.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants be and they are hereby permanently enjoined from using or attempting to use the real property of the said Madison Presbyterian Church for purposes of divine worship or for any other purpose except in conformity with and subject to the government and discipline of the Presbyterian Church in the United States.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants shall forthwith deliver, transfer and assign any money, funds, bonds, securities or other property belonging to the Madison Presbyterian Church which was in their possession or under their control as of May 14, 1975 to the Plaintiffs, Oscar Beck, Jr. and Henry Ragans.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants shall forthwith deliver and transfer all books of account, financial records and church records in any way pertaining to the Madison Presbyterian Church to the Plaintiffs, Beck and Ragans.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant John Baldwin and the other individual Defendants be and they are hereby enjoined and restrained from using, occupying or residing in the property of the said Madison Presbyterian Church designated

as the manse, or from occupying the pulpit of the church property except as they may otherwise be authorized to do so by the Plaintiffs Beck and Ragans and any other persons recognized by the Presbytery of Florida as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant Florida First National Bank at Madison shall forthwith cause an accounting to be made of any and all funds on deposit with said bank in the name of Madison Presbyterian Church in Madison, Florida as of May 16, 1975. Said bank shall forthwith assign, transfer and set aside such of said funds in its possession in an amount equal to the amount of deposit as of May 16, 1975 together with any interest earned on that sum of money to the present date to the Plaintiffs Beck and Ragans. Any funds or monies left over shall be paid by said bank to such persons as may be designated by the individual Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants-Counterclaimants shall take nothing by their counterclaim and shall go hence without day.

IT IS FURTHER ORDERED AND ADJUDGED that the Court retains jurisdiction of the parties and the subject matter of this action to enter such other and further orders as may be necessary or proper to enforce said Judgment, including the award of costs.

DONE AND ORDERED in Chambers at Perry, Taylor County, Florida this 16 day of May, 1975.

/s/ Royce Agner  
ROYCE AGNER  
Circuit Judge

Copies furnished to:

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Supreme Court, U. S.  
FILED

AUG 18 1978

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

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No. 78-91

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R. W. JONES, SR., *et al.*,

*Petitioners,*

v.

CHARLES T. WOLF, *et al.*,

*Respondents.*

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BRIEF FOR  
THE PRESBYTERIAN CHURCH IN THE UNITED STATES  
AS AMICUS CURIAE IN SUPPORT OF  
THE PETITION FOR A WRIT OF CERTIORARI

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**INTEREST OF THE PRESBYTERIAN CHURCH IN  
THE UNITED STATES**

The Presbyterian Church in the United States (hereafter PCUS) is the general church or denomination of which the Vineville Presbyterian Church of Macon, Georgia, was an integral part at the time of the congregational schism into two factions, each claiming to be the "true congregation" of the Vineville Presbyterian Church and entitled to the exclusive use and control of the church property. The Court below refused to recognize the authority of the PCUS church courts in determining which faction constituted the "true congregation." Instead, the Georgia Court imposed its own form of church government (majority vote of local congregation) and permitted the dissident faction to secede from the general

church, taking with it the church property.

It is submitted that the decision below violates the requirements of the First Amendment of the Constitution of the United States insofar as it abrogates the decision of an hierarchical church court properly exercising ecclesiastical jurisdiction. By taking the beneficial use and control of the church property from those who remain in PCUS and continue to be recognized as the PCUS congregation by the courts of the general church, the decision below also violates the due process clause of the Fourteenth Amendment.

The principle announced by this Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872) and most recently confirmed in *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976) requiring civil courts to defer to ecclesiastical authority as the basis of determining intrachurch disputes affecting property rights in hierarchical churches would appear to be controlling in the instant case. However, the refusal of the Georgia Court to recognize and apply this principle is evidence of the confusion and conflict which continues to exist in the area of such property disputes.

It is of extreme importance to PCUS and to other religious denominations having hierarchical forms of church government that this Court settle once and for all the proper basis for interpreting constitutional rules applicable to property disputes in these denominations. Unless this is done, litigation resulting in contradictory rulings concerning the authority, powers and jurisdiction of the hierarchical churches will continue to plague these churches to the particular detriment of their local congregations and individual members.

This Amicus brief is being filed with the consent of all parties (letters on file with the Clerk of the Court).

#### ARGUMENT

Prior to 1970, the rule of action uniformly followed by civil courts in this country in property disputes within hierarchical churches was that if no express trust were controlling,

the civil courts were to defer to the decision of the highest applicable ecclesiastical authority. In the case of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872) which involved a property dispute within a hierarchical church (Presbyterian) this Court described the rule as follows:

It is the case of property acquired in any of the usual modes for general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the question of discipline, or of faith, or of ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. (pages 726 and 727)

The principles applied in *Watson v. Jones* were reaffirmed by this Court in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952) and again in *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), and were rather uniformly followed by the various state tribunals. In the case of *St. John's Presbytery v. Central Presbyterian Church*, 102 So.2d 714 (Fla. 1958) the Florida Supreme Court observed:

This is an abounding array of authorities but they all treat some phase of litigation growing out of church schisms in which both factions lay claim to the church property. When the church is representative, republican or episcopal in government, the au-



thorities uniformly hold the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or a minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated ecclesiastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran, I have found no exception to this rule. *They could not function under any other rule.* (Emphasis supplied)

Thus the rule of deference to ecclesiastical authority in matters affecting property disputes in hierarchical churches appeared to be well settled. However, in 1969, in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), a case also involving a PCUS church property dispute in the State of Georgia, this Court by dictum made reference to "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded."<sup>1</sup>

This reference in the *Hull* opinion to "neutral principles of law" as further expounded by Mr. Justice Brennan in his

<sup>1</sup>The issue in the *Hull* case was the "departure from doctrine" theory which had been applied by the Georgia Court and which this Court struck down as being in violation of the First Amendment. In the *Hull* case, this Court was not concerned with deference to ecclesiastical authority and there is nothing in the Court's decision which in any way controverts or changes principles and rules of actions described in *Watson v. Jones* as affirmed in the *Kedroff* and *Kreshik* decisions.

concurring opinion in *Maryland and Virginia Eldership v. Church of God*, 396 U.S. 367 (1970) and coupled with the Court's denial of a second petition for a writ of certiorari in *Hull* (reported 369 U.S. 1041 (1970)) was soon seized upon by dissenting church factions as justification of their claims for independence and autonomy. Under the rubric of "neutral principles of law" and "formal title" doctrines, these dissident groups are claiming the right by majority vote in the local congregation to secede from the general denomination taking with them the church properties and completely ignoring all church authority and decisions of ecclesiastical courts.

The status of the law with respect to church property disputes in hierarchical churches which was so well developed and settled prior to the *Hull* and *Eldership* cases is now in a state of confusion and there is conflict in the lower courts as to the proper application of the constitutional requirements. The extent and nature of this confusion and conflict are well documented in the Petition for a Writ of Certiorari now before the Court.

The damages being suffered by hierarchical churches as a result of the present unsettled state of the law is severe. PCUS is an example. PCUS is a church with approximately 870,000 members, with 4,010 local congregations in seventeen states and the District of Columbia.<sup>2</sup> Since 1970, there have been no less than 295 instances of withdrawals or attempted withdrawals by dissident local factions claiming by majority vote to be the "true congregation" of the particular local church and under this "neutral principle of law" entitled to the exclusive possession and control of the church property. Fourteen of these instances, including the case now before this Court, involve PCUS congregations in the State of Georgia.

Of the 295 instances of withdrawal or attempted with-

<sup>2</sup>Statistical data on PCUS members and congregations cited herein is taken from Minutes of the 118th General Assembly Presbyterian Church in the United States, June 9-16, 1978.

drawal from the denomination, 130 involved churches which were, or are, the only PCUS church in the community. In these cases the damage to the denominational church and to the local congregational members who wish to remain loyal is particularly severe. The loyal members are deprived of the church property and must make provisions for a new place of worship. Quite often the expense is too great and the loyal congregation is forced to dissolve, leaving the denominational church with no effective church witness in the community.

Many PCUS congregations are relatively small in terms of membership. According to PCUS records for the year 1976 approximately 47 percent of its congregations had less than one hundred members and 12 percent had less than twenty-five members. The statistical records for the year 1977 show that 1,722 congregations, or about 43 percent, have one hundred or less members and 383, or about 9.5 percent, have twenty-five or less members.<sup>3</sup> Eighty of the congregations with one hundred or less members are in Georgia. In jurisdictions where the civil tribunals elect not to follow the traditional rule of deference to ecclesiastical authority but instead a "neutral principle" rule of majority vote, the probabilities of abuse are much greater in the smaller congregations. In the congregations of one hundred or less it is not too difficult for a very few people to gain control of a majority of the membership. It is even possible for a small group to join the church for the very purpose of taking the church out of the denomination or for the purpose of taking the church property for personal and private gain.

The issues which divide church groups are varied and certainly as numerous as the number of existing denominations and religious sects. Some issues are antiquated, extending back over the centuries and their origination can only be traced in church history records. Other issues are merely

<sup>3</sup>The decrease in percentage is a result primarily of smaller churches being taken out of the denomination rather than an increase in the size of membership.

reflections of changing mores and attitudes in our modern society. In recent years, for example, many of the issues dividing local congregations and national churches have been colored with strong economic, political, racial and civil rights overtones. Typical is the list of grievances against PCUS cited by the dissident faction in the *Hull* case. As reported by the Supreme Court of Georgia at 159 S.E.2d 690, page 692, the dissidents objected, among other things, to the ordaining of women as ministers and ruling elders, pronouncements about civil, economic and social matters which the dissidents considered too liberal.

When such actions, pronouncements or policies cause dissent and result in a division of the church members, the basis for adjudicating and determining such intrachurch disputes depends entirely on the form of a particular church's government and such issues are totally beyond the realm of any civil tribunal to determine. In this vein, this Court more than once has instructed that:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. . . . All who unite themselves to such a body [the general church] do so with an implied consent to [its] government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one agrieved by one of their decisions could appeal to the secular courts and have them [sic] reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of

questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. (*Watson v. Jones*, 80 U.S. (13 Wall) 679 at 728, *quoted in Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church*, 393 U.S. 440 at 446, and in *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 at 711.)

PCUS is a church with a connectional or hierarchical form of government and, in the words of the *Watson* Court quoted above, PCUS has created "tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association."

The constitution of the PCUS consists of its doctrinal symbols, embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with *The Book of Church Order*, which comprises the Form of Government, the Rules of Discipline, and the Directory for Worship.

*The Book of Church Order*<sup>4</sup> §13-1 defines the form of government,

... by representative assemblies, composed exclusively of Presbyters or Elders. These assemblies, called Church courts, in the order of their regular gradation, are: Church Sessions, Presbyteries, Synods, and the General Assembly. . . .

The jurisdiction of the church courts is described in §14-5:

<sup>4</sup>All citations to *The Book of Church Order* refer to the Fourteenth printing 1972 edition.

... The Church Session exercises jurisdiction over a single church; the Presbytery over what is common to the Ministers, Sessions, and churches within a prescribed district; the Synod over what belongs in common to three or more Presbyteries, and their Ministers, Sessions and churches; and the General Assembly over such matters as concern the whole Church. . . . Although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation. Disputed matters of doctrine and order, arising in lower courts, may be brought to higher courts for decision.

These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate church court.

The powers of the Presbytery, including those respecting individual churches, are enumerated in §16-7:

...

(3) To review the records of Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church.

(4) To see that the lawful injunctions of the higher courts are obeyed.

...

(6) To unite or divide churches, at the request of the members thereof.



- (7) To organize new churches.
- (8) To receive and dismiss churches.
- (9) To dissolve churches.
- (10) To control the location of new churches and of churches desiring to move to new locations.

...

§6-2 deals with the property of an incorporated church.

If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the

church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation.

From the foregoing provisions, it can be seen that whenever a division or schism occurs in a PCUS church, jurisdiction to determine the issues which have caused the dispute rests primarily with the Presbytery. Whenever factions within a congregation contend that each is the "true church," the decision is to be made by the Presbytery subject to appeal to the higher courts. §6-2 provides that when a church is incorporated, the corporation and its officers shall acquire, hold and dispose of the property for "*the church*." Thus, when the question arises as to who is *the church* for purposes respecting church property, it is still the prerogative of the Presbytery to decide.

The General Assembly of the PCUS by declaratory statements interpreting the church's constitutional provisions has left no doubt as to the position of the denomination with respect to ownership, use and control of church property. The following are pertinent excerpts from the statement adopted by the 1971 General Assembly:

The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. *In every instance nothing in the manner of*

*tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church.* (Emphasis added.)

Disposition of the property of a particular church rests in the will of the congregation of that church. *The congregation is that body of persons recognized as members of that particular church by the respective courts of the church.* (Assembly's Digest, p. 76) (Emphasis added.)

In 1967 the Presbytery of Potomac overtured the General Assembly to make clear the Presbyterian Church, U.S. position regarding the ownership of church property. The General Assembly reaffirmed its 1953 statement and responded: "The Book of Church Order, when supplemented by the declaratory statement of the General Assembly of 1953, is sufficiently clear. (Minutes, 1967, p. 127).

The Book of Church Order provides that Presbytery has the authority to receive and dismiss churches. Appellate procedure is outlined in Chapter 14 of the Form of Government and Part V of the Rules of Discipline.

It should be pointed out that Section 4-(2) provides that upon organization, the members of the congregation of a Presbyterian church shall enter into a covenant and with uplifted hand ". . . solemnly promise and covenant that they will walk together as an organized church, on the principles of faith and order of the Presbyterian Church in the United States, . . . ." (Emphasis added.)

All persons who subsequently enroll themselves as communing members on profession of faith of the particular church must first agree to submit themselves to the government and discipline of the Church.

(Section 210-5(5). Directory for the Worship and Work of the Church.)

Ministers and other officers before ordination approve the government and discipline of the Presbyterian Church in the United States, and promise subjection to their brethren in the Lord. (Form of Government, Sections 29-3, 27-6.)

When any Minister, other officer or communing member feels that he can no longer in good conscience remain a part of the Presbyterian Church in the United States, the Book of Church Order provides an honorable and orderly procedure for separating himself from it. (Rules of Discipline, Chapter 11.)

Section 14-5 of the Book of Church Order sets forth the sphere of action of each Church court and their interrelations to each other: "These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate Church court."

Section 16-7 of the Book of Church Order provides that Presbytery has the power to receive, dismiss, ordain, install, remove and judge ministers, to review the records of the Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church. The Presbytery further has the power to establish the pastoral relation and to dissolve it at the request of one or both of the parties or where the interest of religion imperatively demands it and, further, the Presbytery has the power and authority to see that the lawful injunctions of the higher courts are obeyed, to condemn erroneous opinions which injure the purity or peace of the church, to visit churches for the purpose of inquiring into and redressing evils that may have arisen in them, to unite

or divide churches at the request of the members, to form and receive new churches, to dissolve churches and in general to order whatever pertains to the spiritual welfare of the churches under its care. Further, the Presbytery has the power and authority to appoint commissioners to the General Assembly of the Church and to propose to the Synod or to the General Assembly such measures as may be of common advantage to the whole Church.

It takes more than a name to become a Presbyterian Church, U.S. It takes more than to profess the same faith as the Presbyterian Church, U.S. professes to become a Presbyterian Church, U.S. It takes a profession of that faith and *subjection to the government of that Church to make a Presbyterian Church, U.S.*

*A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. (preface to the Form of Government, III, 1, 5.) It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds. To the Presbytery are superadded the higher judicatories of Synods and General Assemblies, as the means of preserving the standards of doctrine and discipline on a more extended territorial scale.*

Such has been the organization of the Presbyterian Church in Scotland, from the time of John Knox to this date, and has been substantially followed by the Presbyterian Church in England and the United States.

The foregoing represents the Presbyterian Church, U.S. position on church property. This position is subject, however, to the civil laws of the State where the property is situated. Generally, however, the civil courts concluded that a congregation belonging to a religious denomination and subject to the constitution, faith and doctrines thereof, cannot use its property for a purpose which violates the relationship of the congregation to the denomination. (minutes of 111th General Assembly, Presbyterian Church in the United States, p. 171-172.)

In the instant case, the Georgia Court found that title to the Vineville Presbyterian Church was acquired by various conveyances all being to named trustees of the Vineville Presbyterian Church or simply to the Vineville Presbyterian Church and that the Vineville Presbyterian Church was incorporated in 1915. The Court also found that at the time of the schism within the local congregation the Vineville Presbyterian Church was a member unit of the Augusta-Macon Presbytery of PCUS. The Court also found that the Augusta-Macon Presbytery had declared the petitioners and their group the true congregation of the Vineville Presbyterian Church and had withdrawn from the respondents and their group all authority derived from PCUS including all their ecclesiastical privileges and rights of property of the congregation. These findings were never controverted.

Notwithstanding the foregoing, the Court then concluded as a matter of law that legal title to all the church property of the Vineville Presbyterian Church is vested in the local church represented by the respondents (the majority faction).

On appeal the Georgia Supreme Court affirmed the decision of the trial court, again refusing to attach any significance to the determination made by the Augusta-Macon Presbytery. The reason as stated in the Court's opinion was:



Since *Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, 393 US 440 (89 SC 601, 21 LE2d 658) (1969), civil courts have been forbidden, under First Amendment principles as applied to the states by the Fourteenth Amendment, from resolving church property disputes on questions of an ecclesiastical nature. . . . The decision of the Supreme Court of the United States stated there are neutral principles of law, developed for use in all property disputes, which can be applied in resolving church property disputes without resolving underlying controversies over religious doctrine. (See Appendix to Petition for Writ of Certiorari, pages 12a and 13a.)

We submit that the decisions below constitute an illogical and incorrect application of the law. The fact that title to the subject property was vested in the Vineville Presbyterian Church is not the issue in this case. The issue is one of identification, *i.e.* which of the two contending factions constitutes the congregation of the Vineville Presbyterian Church. The identification was made by the proper church court in accordance with the form of government under which the Vineville Presbyterian Church was originally organized and at all times continued to exist and function as an integral part until the unfortunate occurrence of the congregational schism.

Recognition of the church court decision by the Courts below would have been a proper application of the teachings of the *Watson*, *Hull* and *Milivojevich* decisions and would not have required any investigation into or determination of ecclesiastical questions by the civil tribunals. *Accord*, *Adickes v. Adkins*, 264 S. C. 394, 215 S.E.2d 442, *cert. denied*, 423 U.S. 913 (1975) and *Presbytery of the Covenant v. First Presbyterian Church of Paris*, 552 S.W.2d 865 (Tex. Cir. App. 1977).

Instead the Georgia Courts have imposed their own form of government and procedure for determination of the ecclesiastical question of who constitutes the church. The form which these courts have established is government based on majority vote of persons claiming to be members of the local church. This is not the Presbyterian form of government and what the Courts below have done amounts to a violation of the First and Fourteenth Amendments. Mr. Justice Frankfurter said it very well in his concurring opinion in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 122: "[I]t is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads."

Nothing in support of the decision below is added by the Georgia Court's determination that "[t]he corporation charter [of the Vineville Presbyterian Church] of April 29, 1915, and subsequent revivals, fail to show any interest in the corporation other than that of the congregation." This conclusion standing alone is irrelevant to the issue presented. The real issue is the *identification* of the congregation. As one legal scholar has observed:

. . . The church is the religious society or unincorporated association; and the corporation is the agency of the society having as its only purpose serving the interests of the church in holding property and facilitating the property and financial affairs of the church. In legal concept, the relationship of the church to its corporation is as master to servant, principal to agent, or beneficiary to trustee.

It seems fair to say that to look to "formal title" without more to determine all interests in property thus held, is to disregard substance and reality. As the words used to describe the theory denote, it is to resort to form rather than substance. . . . (McKeag, *The Problem of Resolving Property Disputes in Hierarchical Churches*, 48 Pa. Bar Ass'n Q. 281, 288 (1977) )

In the case of *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442, cert. denied, 423 U.S. 913 (1975), the appellants (dissenting majority faction) contended that the decision of the trial court in favor of the loyal minority "should be reversed because 'neutral principles of law' require that the property in question should be in the possession and control of the appellants representing a majority of the members of the First Presbyterian Church of Rock Hill, an eleemosynary corporation." In support of this contention the appellants cited *Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church*, supra. In disposing of this contention the South Carolina Supreme Court correctly said:

... A review of that case convinces us that it is of no comfort to the appellants here and certainly it does not require a result contrary to *Bramlett*.<sup>5</sup> By a determination of this case, this Court exercises no role in determining ecclesiastical questions. We merely settle a dispute on the question of identity, which in turn necessarily settles a dispute involving the control of property. . . .

In response to further contentions that the order of the trial court violated rights of the dissident majority faction guaranteed by the Establishment and Due Process Clauses of the State and Federal Constitutions, the South Carolina Supreme Court in the *Adickes* case said:

... The appellants voluntarily associated themselves with the First Presbyterian Church of Rock Hill and became subject to the discipline and government of the Presbyterian Church in the United States. They voluntarily severed their connection, and when they did they forfeited any right to the use and possession of the property of that church under the long established law of the church and of South Carolina. Due

<sup>5</sup>*Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956)

process has not been denied the appellants. By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take with them upon seceding. The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church, and it belongs to the same after they have withdrawn. They simply are not now a part of that church. . . .

The petitioners in the case now before the Court state that if certiorari is granted, they will argue that the doctrines of "neutral principles" comes into play *only if* no church adjudicatory procedures are available or have been followed. We concur with this position. Further, we submit that deference to decisions of the highest ecclesiastical tribunal within a church of hierarchical polity is in essence the application of "neutral principles" of law. And we strongly contend that this Court's decisions beginning with *Watson v. Jones*, supra, and culminating in *Serbian Eastern Orthodox Diocese v. Milivojevich*, supra, require that civil courts give binding deference to determinations by church courts within hierarchical churches.

We have attempted in this brief to demonstrate something of the extent and nature of the serious legal problems inflicted upon PCUS as a national church and upon its local churches and individual members as a result of the present confusion and conflict among the lower courts. As the petitioners quite correctly have pointed out, these problems are not peculiar to PCUS but also involve the other hierarchical churches and their millions of members. It is of utmost importance to these churches that this Court act immediately to resolve this confusion and conflict, clarifying the constitutional requirements which the civil courts must follow in the adjudication of property disputes within hierarchical churches.

**CONCLUSION**

For the reasons set forth above, we respectfully request the Court to grant a Writ of Certiorari and to reverse the decision below.

Respectfully submitted,

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

---

No. 78-91

---

R. W. JONES, SR., *et al.*,  
*Petitioners,*

v.

CHARLES T. WOLF, *et al.*,  
*Respondents.*

---

**BRIEF OF AMICI CURIAE GREEK ORTHODOX  
ARCHDIOCESE OF NORTH AND SOUTH AMERICA  
AND ASSYRIAN ORTHODOX CHURCH IN THE UNITED  
STATES AND CANADA IN SUPPORT OF THE  
PETITION FOR A WRIT OF CERTIORARI**

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IN THE  
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---

**INTEREST OF AMICI CURIAE**

The Greek Orthodox Archdiocese of North and South America is a hierarchical church under the jurisdiction of the Ecumenical Patriarchate of the Eastern Orthodox Church in Constantinople. Its primate in the Americas is His Eminence Archbishop Iakovos who together with the Synod of Bishops and the Archdiocesan Council of Clergy and Laity administer its more than 450 parishes in the United States.

The Greek Orthodox Archdiocese of North and South America is governed hierarchically with parishes under the diocesan supervision of its bishops and the bishops responsible therefor to the Archbishop and to the Synod of Bishops. As a result, its church government is sufficiently similar to that of the Presbyterian Church in the United States so that it is seriously affected by the decision below.

The Assyrian Orthodox Church in the United States and Canada is a hierarchical one, with a form of government sufficiently similar to that of TPCUS so that the church could be affected by the decision below.

#### CONSENT OF THE PARTIES

This Brief of Amici Curiae is being submitted with the consent of both parties, whose letters of consent are on file with the Clerk.

#### ARGUMENT

Amici will not burden the Court with a repetition of the arguments already advanced in the Petition for a Writ of Certiorari, Petitioners' Reply Memorandum, and the Brief for The Presbyterian Church in the United States As Amicus Curiae in Support of The Petition for a Writ of Certiorari. Instead, Amici wish to assert their agreement with, and their adoption of, the arguments presented in those briefs and memoranda.

In addition, Amici wish to emphasize to the Court that the problems inherent in this case are not simply "Presbyterian" problems. On the contrary, the confusion that exists in the lower courts about the deference to be paid to decisions of hierarchical church courts in matters of legitimate ecclesiastical concern—including which of two or more groups constitute the true congregation of a particular church—is causing serious problems for many different religions. If this Court does not reverse the decision below, we are truly concerned that church court de-

cisions will increasingly be ignored by secular courts in the future, and that the application of so-called "neutral principles" for the resolution of problems such as presented in this case will in fact act as an intrusion into church affairs and an abridgment of the separation of church and state, contrary to the dictates of the First Amendment.

We respectfully suggest that the issues here are of fundamental significance to numerous churches, representing many, many millions of members, throughout the country. A failure to resolve these issues now will cause numerous additional lawsuits, with a concomitant drain on the available funds of a large number of varying religions—funds intended for the more direct religious work of each church on behalf of all its parishioners.

#### CONCLUSION

For the foregoing reasons, Amici Curiae respectfully urge this Court to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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# APPENDIX

Supreme Court, U. S.

FILED

NOV 22 1978

MICHAEL BODAK, JR., CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

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No. 78-91

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R. W. JONES, SR., *et al.*,  
*Petitioners,*

*v.*

CHARLES T. WOLF, *et al.*,  
*Respondents.*

---

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA

---

PETITION FOR CERTIORARI FILED JULY 17, 1978  
CERTIORARI GRANTED OCTOBER 10, 1978

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# INDEX TO GEORGIA SUPREME COURT RECORD

IN THE SUPREME COURT OF THE  
STATE OF GEORGIA

FROM  
BIBB SUPERIOR COURT

R. W. JONES, SR., ROBERT E. LUCAS AND RALPH MIGNEREY,  
*Appellants*

*vs.*

CHARLES T. WOLF, F. LAMAR FLEMING AND  
HENRY M. HOPE, JR.,  
*Appellees*

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## COMPLAINT, FILED 4/6/76

SUPERIOR COURT OF BIBB COUNTY GEORGIA

R. W. JONES SR.,  
ROBERT E. LUCAS  
AND RALPH MIGNEREY,*Plaintiffs*

v.

CHARLES T. WOLF,  
F. LAMAR FLEMMING  
AND HENRY M. HOPE JR.,*Defendants*No.  
BIBB COUNTY,  
GEORGIA,BIBB SUPERIOR  
COURT

## COMPLAINT

COME NOW R. W. Jones Sr., Robert E. Lucas and Ralph Mignerey, individually and as representatives of a class hereinafter described, and filing this their complaint against Charles T. Wolf, F. Lamar Fleming and Henry M. Hope Jr., individually and as representatives of a class hereinafter described, respectfully show the following facts:

1.

Defendants are residents of said State and County, and are subject to the jurisdiction of this Court.

2.

The venue of this action is properly in the Superior Court of Bibb County by virtue of the facts that the defendants are residents of said County and the properties which form the subject-matter of this action are located in said County.

3

3.

The Presbyterian Church In The United States is a Hierarchical Church with a connectional form of government; and plaintiffs, and the class they represent, are, and for many years have been, members of said Church.

4.

The Vineville Presbyterian Church, located in Macon, Georgia, was and is a Local Unit of The Presbyterian Church In The United States.

5.

Plaintiffs, and the class they represent, were and are members of The Vineville Presbyterian Church, a Local Unit of The Presbyterian Church In The United States; the persons constituting said class are too numerous to bring before the Court; these plaintiffs will fairly insure the adequate representation of all members of said class; and the interest asserted by plaintiffs and all members of their class is several in that the object of this action is the adjudication of a claim which will affect the specific properties involved in this case, all within the purview of Sec. 81A-123(a)(2), *Ga. Code Ann.*

6.

The defendants, and the class they represent, were formerly members of The Presbyterian Church In The United States who withdrew from said Church at the time and in the manner hereinafter described; defendants, and the class they represent, were members of The Vineville Presbyterian Church at the time of said withdrawal; and the named defendants will fairly insure the adequate representation of all members of said class within the purview of Sec. 81A-123(a)(2), *Ga. Code Ann.*

7.

The Structure of The Presbyterian Church In The United States is such that a Local Unit of said Church is governed by what is known as its Session; the Sessions of the Local Church Unit are governed by what is known as a Presbytery which governs several Local Church Units within a designated geographical area; the Presbytery is governed by what is known as a Synod which governs all Local Church Units and Presbyteries within a State; and the Synods are governed by the General Assembly which governs all Local Church Units, Presbyteries and Synods in the United States. Said structure is prescribed and defined by Chapters 15 through 18, inclusive, of the BOOK OF CHURCH ORDER attached hereto as Exhibit "A"; and each Governmental Unit in said structure (Presbytery, Synod and General Assembly) is specifically designated as a Church Court by Chapter 14 of said BOOK OF CHURCH ORDER.

8.

On May 27, 1973, the defendants and the members of the class they represent caused to be submitted to the congregation of The Vineville Presbyterian Church a resolution purporting to withdraw said Local Church Unit from The Presbyterian Church In The United States, a copy of said resolution being attached hereto as Exhibit "B"; and a majority of said congregation, consisting of the defendants and the class they represent, voted for the adoption of the resolution, all as shown by a copy of the official minutes of said meeting, attached hereto as Exhibit "C".

9.

On said date of May 27, 1963, the Presbytery of Macon-Augusta, the Church Court of The Presbyterian Church In The United States with the immediate jurisdiction over the Local Church Unit known as Vineville

Presbyterian Church, was notified of the adoption of the aforesaid resolution by a written document, a copy of which is attached as Exhibit "D"; and, on the same day, said Church Court of The Presbyterian Church In The United States was notified of the withdrawal of defendant Hope from the jurisdiction of The Presbyterian Church In The United States, a copy of the document effecting such withdrawal being attached hereto as Exhibit "E".

10.

After withdrawing from The Presbyterian Church In The United States, the defendants and the class they represent united with and became a member Church of The Central Georgia Presbytery Of The Presbyterian Church In America.

11.

The Church Courts of The Presbyterian Church In The United States hereinabove described are authorized and empowered to appoint Commissions to perform the functions of the Church Court, said authority being expressly given by Sec. 19-2 through 19-5 of said BOOK OF CHURCH ORDER attached as Exhibit "A".

12.

On or about June 26, 1973, a duly authorized Commission of The Presbyterian Church In The United States issued its ruling, order and judgment on said actions of the defendants and the class they represent, a copy of the same being attached hereto as Exhibit "F". Said ruling, order and judgment was issued by said Commission of said



Court pursuant to the provisions of Sec 111-2 and Sec. 111-3 of the BOOK OF CHURCH ORDER attached as Exhibit "A". Said ruling, order and judgment decreed that the defendants and the class they represent were no longer officers or members of The Presbyterian Church In The United States, and that the plaintiffs and the class they represent were the true members of said Church. No appeal was taken by defendants or any member of the class they represent to any higher Church Court of The Presbyterian Church In The United States.

## 13.

Plaintiffs Jones, Lucas and Mignerey are the Trustees of Vineville Presbyterian Church, all as shown by an instrument filed of record in the Office of the Clerk of Bibb Superior Court in accordance with the provisions of Sec. 22-5509, *Ga. Code Ann.*; and title to all property of Vineville Presbyterian Church, both real, personal and mixed is in said Trustees by operation of Sections 22-5507, 22-5508 and 22-5509, *Ga. Code Ann.*

## 14.

Notwithstanding the facts that defendants and the class they represent have voluntarily withdrawn from The Presbyterian Church In The United States and have united with and become a member Church in a different religious organization, and notwithstanding the facts that plaintiffs, in the capacity of Trustees of the class they represent, hold legal title to the Church property with the full sanction of the Church Court, the defendants and the class they represent nevertheless continue to maintain possession, dominion and control over the Church Edifice and all of its appurtenances and assets and are utilizing them to propagate the tenets and doctrines of The Presbyterian Church In America.

## 15.

By virtue of the foregoing facts, plaintiffs and the class they represent have been prohibited and excluded from utilizing the Church Edifice and its appurtenances and assets as a Local Church Unit of The Presbyterian Church In The United States, although their faith, loyalty and allegiance has at all times remained with said Church.

## 16.

Defendants and the class they represent have never claimed any right of possession of said Church property pursuant to the Act of the General Assembly of Georgia of 1968, pgs. 565, 582, Codified as Sec. 22-5504 and Sec. 22-5506, *Ga. Code Ann.*; they have denied claiming the property on said basis in documents filed by them in Federal litigation between these parties; and they do not now claim said property pursuant to the terms of said Statute.

## 17.

Plaintiffs and the class they represent have at all times diligently pursued their rights in the premises in that on February 1, 1974, they instituted an action In The United States For The Middle District Of Georgia against the defendants and the class they represent, but said action was dismissed by said Court solely for an alleged lack of Federal jurisdiction which judgment was subsequently affirmed by The United States Fifth Circuit Court Of Appeals, and concerning which a Writ of Certiorari was denied to the plaintiffs by The Supreme Court Of The United States on March 22, 1976.

18.

Plaintiffs and the class they represent bring this action for a declaratory judgment adjudicating their rights in the premises and for a permanent injunction enjoining the defendants and the class they represent from continuing to use said Church premises, property and assets for any purpose other than as a unit of The Presbyterian Church In The United States, and from exercising possession, dominion and control over said premises in such manner as to prevent plaintiffs and the class they represent from utilizing and operating the same as a Local Unit of The Presbyterian Church In The United States.

WHEREFORE, plaintiffs pray:

(a) The issuance and service of summons in terms of law.

(b) That they be granted a declaratory judgment adjudicating that they are persons entitled to possession, control and quiet enjoyment of all property of Vineville Presbyterian Church for use and operation as a Local Unit of The Presbyterian Church In The United States.

(c) For permanent injunction enjoining the defendants and the class they represent from continuing to use said Church premises and property for any purpose other than as a Local Unit of The Presbyterian Church In The United States.

(d) For permanent injunction enjoining the defendants and the class they represent from exercising possession, dominion and control over said Church premises and property so as to prevent plaintiffs and the class they represent from utilizing and operating the same as a Local Unit of The Presbyterian Church In The United States.

(e) For permanent injunction enjoining the defendants and the class they represent from continuing to use

said Church premises and property for any purpose inconsistent with the order, ruling and judgment of the Church Court hereinabove described.

(f) For permanent injunction enjoining defendant Henry M. Hope, Jr. from operating as Pastor at The Vineville Presbyterian Church in view of his withdrawal from The Presbyterian Church In The United States and the ruling, order and judgment of the Church Court withdrawing his authority to function in said capacity.

(g) For such other and further relief as may be appropriate.

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## GEORGIA, BIBB COUNTY

Personally appeared before the undersigned officer authorized by law to administer oaths, R. W. Jones Sr., who, on oath, deposes and says that the facts set out in the foregoing complaint are true and correct.

R. W. JONES, SR.  
R. W. Jones, Sr.

Sworn to and subscribed before me  
this 6th day of April, 1976.

FLORENCE STEAD  
Notary Public, Bibb County, Georgia  
Notary Public, Bibb County, Georgia  
My Commission Expires May 15, 1977

## EXHIBIT A



## THE BOOK OF CHURCH ORDER

PRESBYTERIAN CHURCH IN THE UNITED STATES





THE  
BOOK OF CHURCH ORDER  
OF THE  
PRESBYTERIAN CHURCH  
IN THE UNITED STATES



*Printed for*  
THE GENERAL ASSEMBLY OF  
THE PRESBYTERIAN CHURCH IN THE UNITED STATES  
by  
The Board of Christian Education  
Richmond, Virginia

Revised Form of Government and Rules of Discipline (Revised 1961)

Directory for the Worship and Work of the Church (Revised 1963)

*Fourteenth printing 1972*  
(Incorporating changes made at the  
112th General Assembly)

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of the Presbyterian Church in the United States 1963

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## Historical Preface for the Form of Government and the Rules of Discipline



*The Form of Government* and *The Rules of Discipline* have their historic roots in the Protestant Reformation, which sought to reform the structure and life of the Church as well as the doctrine of the Church according to the Word of God. In particular, they have their source in the work of John Calvin in Geneva.

John Calvin belonged to the second generation of Reformers. He built upon the work of his early colleague in Geneva, William Farel, and upon the contributions to polity of Ecolampadius in Basel and Martin Bucer in Strasbourg. Calvin's contribution to church polity is to be found in the fourth book of the *Institutes* and in the practical development of the structure of church life in Geneva under his leadership. In 1537 Calvin and Farel presented the City Council with *Articles Concerning the Organization of the Church and Worship in Geneva*. In 1541 Calvin prepared a more elaborate polity entitled *Ecclesiastical Ordinances of the Church of Geneva*. Much of Calvin's ministry in Geneva was consumed in the defense of these Ordinances, and even the draft of 1561 fell short of Calvin's goal of a church fully independent of the state. This work became one of the most influential books in our Presbyterian history. However, the full development of Presbyterian polity in Geneva was subject to a twofold limitation. One was the City Council, which, having obtained freedom from the bishop, wanted to keep the reformed church under its power. Furthermore, Geneva was a city; and a polity which served its needs was not adequate for a nation. The development of Presbyterianism on a national scale as a series of graded courts was first achieved in France.

Calvin's ministry was marked by an emphasis on discipline, not only in the general sense of church polity but also in the sense of the regulation of conduct and life. Some Reformed confessions make discipline along with the preaching of the Word and the administration of the sacraments a mark of the Church's existence. The Church must practice discipline to maintain the

## THE BOOK OF CHURCH ORDER

honor of God, to prevent the corruption of the good by the evil, and to bring those who err to repentance. A characteristic of the Calvinistic tradition has always been an insistence upon Christian character and obedience to the will of God.

Presbyterianism began to make its appearance in Scotland as early as 1558. In 1560 John Knox and his colleagues presented Parliament with the *First Book of Discipline*. The Presbyterianism of this book was far from complete, but the influence of Calvin is apparent. Other influences were the polities of such churches as the Reformed Church of France, John a'Lasco's Congregation of Foreigners in London, Pullain's French Church in Strasbourg and the Church of England under Edward VI.

The *First Book of Discipline* was replaced by the *Second Book of Discipline* in 1592. Andrew Melville, who had studied for six years in France and who taught and studied for five years in Geneva, was the most influential person in its development. This polity provides for a series of graded courts. At this time Scotland was organized according to sessions, presbyteries, synods, and the General Assembly, demonstrating that Presbyterianism is as effective a polity for a nation as for a city. The *Second Book of Discipline* is more strictly Presbyterian than the first book, and as such is a very important source of the polity of our church.

While the battle for Presbyterianism was developing in Scotland, strong advocates of Presbyterianism also appeared in England. Among these were Walter Travers and Thomas Cartwright, who were responsible for a statement of Presbyterian polity known as *The Sacred Discipline of the Church, Described in the Word of God*. A very important document in the ancestry of American Presbyterianism is the *Form of Presbyterial Church Government*, which was prepared by the Westminster Assembly in 1644. The Westminster Assembly was composed of Episcopalians and Congregationalists as well as Presbyterians, and it met at a time when the question of a national polity for England was at issue. The result is that the Presbyterianism of the document is somewhat modified and the various stresses of the time are apparent.

Early Presbyterianism in America was guided by the Westminster *Form of Presbyterial Church Government*, which had been adopted by the Church of Scotland. In 1786 the Synod took action to provide a constitution which would be adapted to the Ameri-

## HISTORICAL PREFACE

can situation. In 1788 the *Form of Government and Discipline* was approved. The Synod rejected attempts to impose Scottish polity on the American church and also efforts to write a new polity and discipline. The polity which was adopted contains much which is taken from Britain and the Westminster Assembly, but it was also adapted to the demands of American church life. The *Form of Government* is a living document and was revised to meet the needs of the American church, especially in 1821.

When the Presbyterian Church in the United States (the Presbyterian Church in the Confederate States of America) came into being in 1861, it adopted the polity and discipline which had been in use in the Old School Assembly prior to the rupture. It also immediately appointed a committee to make revision of the *Form of Government* and the *Rules of Discipline*. J. H. Thornwell, who had been working on a revision of the *Rules of Discipline* before the division of the Church, was made chairman; and he was succeeded after his death in 1862 by J. B. Adger. The uncertainty of the times and the uncertainty of the church as to what it wanted in its polity delayed the adoption of a revision until 1879. The revised polity and discipline continues the tradition of Presbyterianism in America; but it also reflects the debates on polity which engaged such theologians as Charles Hodge, R. J. Breckinridge, J. H. Thornwell, T. E. Peck, and J. L. Girardeau. Distinctive emphases of Thornwell and his associates were written into the revision of 1879. Significant revisions have also been made in 1925 and 1945.

*Documents of Presbyterian Polity*

1. a) John Calvin, *Institutes of the Christian Religion*, Book IV.  
 b) "Articles Concerning the Organization of the Church and Worship at Geneva (1537)." *Library of Christian Classics*, Vol. XXII, Westminster Press, Philadelphia, 1954.  
 c) "Draft Ecclesiastical Ordonnances" (Geneva, 1541), *Library of Christian Classics*, Vol. XXII. Critical texts of the Articles of 1537 and of the Ordonnances of 1541 and 1561 can be found in *Joannis Calvini Opera Selecta*, Vol. I, II, edited by Peter Barth, Wilhelm Niesel, and Dora Scheuner. Chr. Kaiser, München, 1926 and 1952.
2. The polity of the Reformed Church in France (1559) and other continental polities may be found in *Bekenntnisschriften*



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und Kirchenordnungen der nach Gottes Wort reformierten Kirche, edited by Wilhelm Niesel. Evangelischer Verlag, A. G., Zollikon, Zurich.

3. *First Book of Discipline*. May be found in Laing, *The Works of John Knox*, Vol. II, and in modern English in William Croft Dickinson, editor, *John Knox's History of the Reformation*, Vol. II. Philosophical Library, New York, 1950.
4. *The Second Book of Discipline*. May be found in appendix of Stuart Robinson, *The Church of God*. Philadelphia and Louisville, 1858.
5. *The Sacred Discipline of the Church, Described in the Word of God*. May be found in the appendix of C. A. Briggs, *American Presbyterianism*. Charles Scribner's Sons, New York, 1885.
6. *Form of Presbyterian Church Government*. May be found in appendix of Stuart Robinson, *The Church of God*. *The Confession of Faith, the Larger Catechism, the Shorter Catechism, the Directory for Publick Worship, the Form of Presbyterian Church Government*. William Blackwood & Sons, Ltd., Edinburgh and London, 1959.
7. *The Southern Presbyterian Review* contains many articles on polity, written during the 19th-century debates. Charles Hodge, *Discussions in Church Polity* (edited by William Durant). Charles Scribner's, New York, 1878. T. E. Peck, *Notes on Ecclesiology*. Presbyterian Committee of Publication, Richmond, 1892. John B. Adger and J. L. Girardeau, editors, *The Collected Writings of James Henley Thornwell*, Vol. IV. Presbyterian Committee of Publication, Richmond, 1881. Thomas Smyth, *Presbytery and Not Prelacy*, 1843.
8. *The Form of Government and The Rules of Discipline* used in American Presbyterianism are found in many editions dating from 1789 and continuing down to the present time.

## Historical Preface for the Directory for the Worship and Work of the Church



*The Directory for the Worship and Work of the Church* has its source in the teaching of Scripture as it is interpreted in the Confession of Faith and in the everyday demands for the ordering of the Church's life. Its historical roots reach back to the ancient Church, but the more immediate origin of the Directory is to be found in the reformation of worship and practice that was an essential part of the Protestant Reformation of the sixteenth century and the Puritan revolution of the seventeenth century.

The Directory of our Church was first prepared in 1787-1788 with the constituting of the General Assembly. This Directory quite clearly owed a real debt to the Directory of the Westminster Assembly. However, it was sufficiently original and reflective of the frontier situation in America that it can be called an authentic document of American Presbyterianism. The Directory continued to be the official document of the Presbyterian Church in the United States after the division of the Presbyterian Church at the time of the Civil War. It has been revised many times since its origin in 1789. The current revision, which adds "Work" to the title, reflects the great expansion in church activities, both in the local congregation and in the higher courts, during the past one hundred years. This unification of worship and work is based upon the conviction that worship and work are alike the service of God and are governed by the Word of God as interpreted in the Confession and Catechisms.

It is important to note that the Directory is the product of many influences. There is no one narrowly defined pattern of Presbyterian or Reformed worship. The present practice of the Church is the product of many traditions in the Reformed family. Among the more important are the tradition of Zwingli, Farel, and John a'Lasco, with its emphasis upon preaching; the tradi-

## THE BOOK OF CHURCH ORDER

tion of Strasbourg and Geneva, with its emphasis on the sacraments as affixed to the Word; the tradition of the Puritans of the Westminster Assembly, with emphasis upon simplicity and Biblical authority; and the tradition of the American frontier, with its demand for worship relevant to a missionary situation.

It is important to note that the Directory is not a service book. This is a tradition which dates back to the Westminster Assembly. The members of this Assembly were in reaction against the abuses of the service book, which they believed made "an idle and unedifying ministry, which contented itself with set forms made to their hands by others." The Church has subsequently made profitable use of a service book, but it has limited its Constitution to a directory with guides and rules for worship but with no prescribed forms, save the ordination vows.

Important documents in the liturgical tradition of the Directory may be found as follows:

1. Early Reformed Liturgies  
Bard Thompson, *Liturgies of the Western Church*. The World Publishing Company, New York, 1961.  
Bard Thompson, "Reformed Liturgies in Translation," *Bulletin of the Theological Seminary of the Evangelical and Reformed Church*, XXVIII.  
Bard Thompson, "The Palatinate Liturgy," in *Theology and Life*, Vol. 6.
2. Westminster Assembly: *The Directory for Publick Worship*. See *the Confession of Faith, the Larger Catechism, the Shorter Catechism, the Directory for Publick Worship, the Form of Presbyterian Church Government*. William Blackwood & Sons, Ltd., Edinburgh and London, 1959.
3. *The Directory for Worship of American Presbyterianism*. Various editions of the *Book of Church Order* since 1789.

Members of the Revision Committee 1955-1963 were Vernon S. Broyles, Jr., Chairman; Edward D. Grant, Philip F. Howerton, John H. Leith, James A. Millard, Jr., and John W. Wade.

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## THE FORM OF GOVERNMENT



# THE FORM OF GOVERNMENT\*



## Preface

### I. JESUS CHRIST, THE KING AND HEAD OF THE CHURCH

Jesus Christ, upon whose shoulders the government is, whose name is called Wonderful, Counsellor, the Mighty God, the Everlasting Father, the Prince of Peace, of the increase of whose government and peace there shall be no end, sits upon the throne of David, and upon his kingdom to order it and to establish it with judgment and with justice from henceforth even forever. (Isaiah 9:6-7)

All power is given unto him in heaven and in earth by the Father, who raised him from the dead, and set him on his own right hand, far above all principality, and power, and might, and dominion, and every name that is named, not only in this world, but also in that which is to come. The Father has put all things under his feet, and gave him to be Head over all things to the Church, which is his body, the fulness of him that filleth all in all. (Ephesians 1:20-23)

Jesus Christ, being ascended up far above all heavens, that he might fill all things, received gifts for his Church, and gave officers necessary for the edification of his Church and the perfecting of his saints. (Ephesians 4:10-12)

Jesus Christ, who is the Mediator, the sole Priest, Prophet, King, Savior, and Head of the Church, contains in himself all the offices in his Church, and has many of their names attributed to him in the Scriptures. He is Apostle, Teacher, Pastor, Minister, and Bishop, the only Lawgiver in Zion. Since his ascension he is present with his Church by his Spirit and Word, and the benefits of all of his offices are effectually applied by the Holy Spirit.

It belongs to his Majesty from his throne of glory, to rule and

\* Approved and enacted by the General Assembly April 29, 1961.

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teach the Church, through his Spirit and Word, by the ministry of men, thus mediately exercising his own authority, and enforcing his own laws, unto the edification and establishment of his kingdom.

Christ, as King and Head of the Church, has given to his Church its officers, oracles, and ordinances. He has ordained therein his system of doctrine, government, discipline, and worship. These are either expressly set down in Scripture, or may by good and necessary inference be deduced therefrom. In matters of the worship of God and the government of the Church, there are some circumstances common to human actions and societies, which are to be ordered by reason and Christian prudence, according to the general rules of the Word, which always are to be observed. Insofar as this system is expressly set forth in Scripture nothing may be added or taken away.

### II. THE CONSTITUTION DEFINED

The Constitution of the Presbyterian Church in the United States consists of its doctrinal symbols, embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with the Book of Church Order, which comprises the Form of Government, the Rules of Discipline, and the Directory for Worship.

### III. THE DOCTRINE OF CHURCH GOVERNMENT —SUMMARY

1. The Presbyterian form of Church government is government by Presbyters or Elders, gathered in courts in regular gradation. This scriptural form of Church government is here set forth under five parts, namely: A. The Church; B. Its Members; C. Its Officers; D. Its Courts; and E. Its Orders.

2. The Church catholic, which the Lord Jesus Christ has erected in this world for the gathering and perfecting of the saints, is his visible kingdom of grace, and is one and the same in all ages.

3. The members of this visible Church catholic are all those persons in every nation who make profession of faith in the Lord Jesus Christ and promise submission to his law, together with their children.

4. The officers of the Church, by whom all its powers are ad-



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ministered, are, according to the Scriptures, Ministers of the Word, Ruling Elders and Deacons.

5. Ecclesiastical jurisdiction is a joint power, to be exercised by Presbyters in courts, and cannot be exercised by Presbyters as individuals. The courts may have authority over one or many churches, but sustain such mutual relations as to express the unity of the Church.

6. Officers are ordained only by the authority of a court.

7. This scriptural doctrine of government by Presbyters or Elders is established for the perfecting of the order of the visible Church, but is not essential to its existence.

## PART I

## Doctrine of the Church

## CHAPTER 1

*The Nature and Extent of Church Power*

§ 1-1. The Church, with its ordinances, officers, and courts, is the agency of Christ which he has ordained for the edification of his people, for the propagation of the Christian faith and for the evangelization of the world.

§ 1-2. The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth. This power rests not in individuals but in the Church as a whole.

§ 1-3. The sole functions of the Church are to proclaim, to administer, and to enforce the law of Christ revealed in Scripture. The exercise of Church power has divine sanction only when in conformity with the Word.

§ 1-4. Church power is exercised both by church members and by Church officers. It is exercised by the members of a church in choosing those whom Christ calls to office in his Church. It is exercised by Church officers individually, as in preaching the Gospel, administering the Sacraments, reproving the erring, visiting the sick, and comforting the afflicted, and is called the Power of Order. It is exercised by the Elders jointly, in Church courts, in the form of judgment or administration, and is called the Power of Jurisdiction.

## CHAPTER 2

*The Visible Church Catholic*

§ 2-1. The visible Church, before under the old Covenant, and now under the Gospel, is one and the same, and consists of all

## FORM OF GOVERNMENT

§ 2-2

those who make profession of their faith in the Lord Jesus Christ, together with their children.

§ 2-2. The unity of the body of Christ, though obscured, is not destroyed by its division into different denominations of professing Christians. All denominations which maintain the Word and Sacraments in their fundamental integrity are to be recognized as true branches of the Church of Jesus Christ.

§ 2-3. The visible Church catholic includes the local congregations, or particular churches. This is in accord with scriptural teaching.

## CHAPTER 3

*The Particular Church*

§ 3-1. A particular church consists of a number of professing Christians and their children, associated together for divine worship and godly living as set forth in Scripture, and submitting to the lawful government of Christ's kingdom.

§ 3-2. Its officers are Pastor(s), Ruling Elders, and Deacons.

§ 3-3. Its government and jurisdiction, being a joint power, is lodged in the Church Session, which consists of the Pastor(s) and Ruling Elders.

§ 3-4. Its ministry of sympathy and service is especially lodged in the hands of the Deacons, who serve under the jurisdiction of the Session.

§ 3-5. The Ordinances established for his Church by Christ, the Head, are: prayer; the singing of psalms and hymns; reading, expounding, and preaching the Word of God; administering the Sacraments of Baptism and the Lord's Supper; fasting and thanksgiving; catechising; Christian nurture; making offerings for the relief of the poor, the extension of the Gospel and other Christian causes; exercising discipline; and, invoking the blessing of God upon the people.

§ 3-6. A church without a Pastor, and with no Minister avail-

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able, should be convened by the Session on the Lord's Day, and at other suitable times, for prayer, praise, the reading and expounding of the Holy Scriptures, and exhortation or the reading of a sermon of some approved Minister. In like manner, Christians in places where there is no church ought to meet regularly for the worship of God.

## CHAPTER 4

*The Organizing of a Particular Church*

§ 4-1. A church can be organized only by the authority of Presbytery. The Presbytery may proceed with the organization directly, or through a Commission, or through an Evangelist to whom the Presbytery has entrusted the power to organize churches. In the organizing of a church, the procedure shall be as follows:

(1) Church members shall present evidences of their membership, and applicants for admission to the Church on profession of faith in Christ shall present themselves for examination and baptism as necessary.

(2) These persons shall then be required to enter into covenant, by answering the following question affirmatively with uplifted hand: "Do you, in reliance on God for strength, solemnly promise and covenant that you will walk together as an organized church, on the principles of the faith and order of the Presbyterian Church in the United States, and that you will be zealous and faithful in maintaining the purity and peace of the whole Church?"

(3) The presiding Minister shall then say: "I now pronounce and declare that you are constituted a church according to the Word of God and the faith and order of the Presbyterian Church in the United States. In the name of the Father, and of the Son, and of the Holy Spirit. Amen."

(4) Ruling Elders and Deacons shall then be elected, if the way be clear, and steps taken for their instruction, examination, ordination, and installation.

(5) Action shall be taken to secure, as soon as practicable, the regular preaching of the Word and administration of the Sacraments. [See § 10-6; 23-4.]

## CHAPTER 5

*Congregational Meetings*

§ 5-1. The congregation consists of all the communing members on the active roll of a particular church. Only such members in good standing who are present at a congregational meeting are entitled to vote. A congregation may at its discretion set a minimum age for the voting of communing members in congregational meetings, provided that such age be not more than sixteen.

§ 5-2. The Session shall call a congregational meeting whenever necessary. It shall give public notice at least one week in advance. Only business stated in the notice shall be transacted. The Session shall call a congregational meeting without delay when requested in writing by one-fourth of the congregation.

§ 5-3. If the church has not more than one hundred members on the active roll, the quorum of a congregational meeting shall consist of one-fourth of such members. If the church has more than one hundred members on the active roll, the quorum shall be one-tenth of such members, but not less than twenty-five.

§ 5-4. The Pastor shall be the Moderator of congregational meetings by virtue of his office. If it should be impracticable or inexpedient for him to preside, or if there is no Pastor, the Session shall appoint one of its number to call the meeting to order and to preside until the congregation shall elect its presiding officer, who shall be a Minister of the Presbyterian Church in the United States or any adult member of that particular church. [See § 25-6.]

§ 5-5. A Clerk shall be elected by the congregation to serve at that meeting or for a definite period, or the Clerk of the Session may be chosen by common consent to be the Clerk of the congregational meeting. The Clerk shall keep correct minutes of the proceedings and of all business transacted and preserve these minutes in a permanent form, after they have been attested by the Moderator and the Clerk of the meeting. He shall also send a copy of these minutes to the Church Session, which shall enter them in its minute book.

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§ 5-6. A Minister, since he is not a member of the congregation, cannot vote in a congregational meeting. When a Minister is moderating a congregational meeting and there is a tie vote, he shall put the question a second time, and if there is not a majority for the motion, he shall declare the motion lost.

## CHAPTER 6

*Incorporation and Property of a Particular Church*

## § 6-1. FOR AN UNINCORPORATED CHURCH

A particular church which is not incorporated, desiring to elect trustees, may select from among its membership trustees or officers of like nature who shall have the power and authority to buy, sell, or mortgage property for the church, to accept and execute deeds as such trustees, to hold and defend titles to the same, to manage any permanent special funds entrusted to them for the furtherance of the purposes of the church. In the fulfillment of their duties such trustees shall be subject always to the authority, and shall act solely under the instructions, of the congregation which they serve as trustees. The powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons. Such trustees shall be elected in regularly constituted congregational meetings.

## § 6-2. FOR AN INCORPORATED CHURCH

If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Dea-



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cons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation.

§ 6-3. If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church; and the receipt and acquittance of the Presbytery, or its proper representatives, shall be a full and complete discharge of all liabilities of such persons holding the property of the church. The Presbytery receiving such property shall apply the same or the proceeds thereof at its discretion.

## PART II

## Doctrine of Church Members

## CHAPTER 7

*Communing and Non-Communing Members*

§ 7-1. Communing members are those who have made a profession of faith in Christ, have been baptized, and have been admitted by the Session to the Lord's Table. They are entitled to all the rights and privileges of the Church, including the right to participate in the Sacrament of the Lord's Supper, the right to present children for Baptism, and the right to take part in meetings of the congregation of which they are members in good standing.

§ 7-2. The children of believers are, through the covenant and by right of birth, non-communing members of the Church, until admitted to the Lord's Table.

§ 7-3. All children of the covenant are entitled to Baptism, but whether baptized or not, are entitled to the pastoral oversight, instruction and government of the Church, with a view to their embracing Christ, and thus possessing personally all the benefits of the covenant.

## CHAPTER 8

*Jurisdiction Over Church Members*

§ 8-1. The Church Session may receive members from other churches by certificate of dismissal from other churches in our own denomination or in another denomination recognized by our own as a true branch of the Church of Jesus Christ.

§ 8-2. When a church member is unable to obtain a certificate of dismissal, he may be received upon presentation of other satisfactory testimonials that he is a member in good standing of an-

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other church, or upon his reaffirmation of his original covenant obligations. When a member is received in one of the above ways, the church to which he formerly belonged shall be notified, and the Session shall record him as received by certificate.

§ 8-3. The Church Session must grant a certificate of dismissal upon the request of any member of the church who is in good standing, whether requested for another church of our own denomination, or of one recognized by our own as a true branch of the Church of Jesus Christ.

§ 8-4. A certificate of dismissal is granted by a Session only to the governing body of another church.

§ 8-5. A church member who has removed his residence so that he no longer can participate regularly in the ordinances of his church is obligated to arrange for the transfer of his membership to the church with which he intends to unite.

§ 8-6. A member being transferred from one church to another is under the jurisdiction of the dismissing church until received by the other. No certificate of dismissal shall be valid testimony of good standing for more than one year.

§ 8-7. The Session shall keep three rolls of the members of the church: (1) active, (2) inactive, and (3) non-communing. The active roll shall consist of those admitted to the Lord's Table who are active in the church's life and work. The inactive roll shall consist of those removed by the Session from the active roll because of inactivity in the church's life and work. The non-communing roll shall consist of the baptized children of believers who are communing members of that particular church. Only the active roll need be reported to the Presbytery.

§ 8-8. The Session, mindful of their obligation as shepherds of souls, shall review carefully all three rolls at least annually.

§ 8-9. A member, who for one year willfully does not participate in the ordinances at his church nor otherwise express a serious interest in the church, may be transferred by the Session to the inactive roll. No name shall be placed upon the inactive roll in this

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manner until after the Session shall have made diligent effort to discover the causes of the member's non-participation and to restore him to activity in the church's life.

§ 8-10. A member who changes his residence so that he cannot participate regularly in the ordinances at his church shall be notified by the Session that it is his duty to arrange for the transfer of his membership to some church where he may be active. The Session shall at the same time notify the Session of a church into whose vicinity he has moved, requesting it to take pastoral oversight of the member. If such a member neglects for one year to have his membership transferred, his name may be placed upon the inactive roll.

§ 8-11. If a member whose name is on the inactive roll shall resume participation in the ordinances at his church, the Session shall act to restore his name to the active roll.

§ 8-12. When a member whose name is on the inactive roll requests the Session to dismiss him to another church, the Session shall grant a certificate of dismissal indicating his inactive status.

§ 8-13. When the name of a Ruling Elder or Deacon is placed on the inactive roll the Session shall at the same time dissolve his relationship as an officer in that church, and shall report its action to the congregation and to the officer.

§ 8-14. When a member moves temporarily for educational or military purposes he may establish an affiliated membership at a church where he is a resident. The Session may issue to the church with which the member intends to be affiliated a certificate of good standing, valid for one year and subject to renewal, but shall retain the member's name on its active roll. The Session receiving the certificate shall place the name on a separate roll for affiliated members, which shall not be reported to the Presbytery.

§ 8-15. If a communing member requests the Church Session to remove his name from the roll, or renounces his membership by joining some other denomination, the matter shall be handled by the Session under the appropriate provisions of The Rules of Discipline. [See R. D. § 111-1 through 4.]

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§ 8-16. When a member of the church is ordained to the Ministry of the Word, the ordaining Presbytery shall notify the particular church of which he has been a member. The Church Session shall note in its records that the Minister is now a member of the Presbytery and no longer a member of a particular church.

§ 8-17. A member who is serving abroad as an unordained missionary under the Board of World Missions may become a member of the church to which he is related in missionary service. The Session of his church shall retain the member's name on its active roll, and he shall be considered a member of both churches. The provisions of § 29-10 shall be applicable in the case of a member who is an officer in his church.

§ 8-18. If a church is dissolved by the Presbytery, or otherwise ceases to exist, and on the rolls of such church, members remain who have made no arrangements to transfer their membership to some other church, the Presbytery shall have power to transfer such members to another church within its bounds whose Session agrees to receive them.

## PART III

## Doctrine of Church Officers

## CHAPTER 9

*The Nature of Church Offices*

§ 9-1. Under the New Testament, our Lord at first collected his people out of different nations and united them to the household of faith by the mission of extraordinary officers endued with miraculous gifts. These extraordinary officers have ceased from the Church unless God shall choose from time to time to raise up such men.

§ 9-2. The whole polity of the Church consists of (1) doctrine, including worship and the administration of the Sacraments, (2) government, including discipline, and (3) distribution, the Church's ministry of compassion. For ordering the life of his Church, Christ, under the New Testament, has given his Church three offices: the office of the Minister of the Word and Sacraments, the office of the Ruling Elder, and the office of the Deacon. These are the ordinary offices, to be continued perpetually in the Church. Both men and women shall be eligible to hold Church offices.

§ 9-3. Both the Minister of the Word and the Ruling Elder are known as Presbyters, and they share equally in the governing of the Church.

§ 9-4. It is Christ's proper office to rule in his Church universal and in each particular church, through his Spirit and Word, by the ministry of men. Since the authority of any officer in the Church is derived from Christ and belongs not to the officer, any man who holds office should not assume any spiritual pre-eminence over his brethren, but be only minister, disciple, and servant.



## CHAPTER 10

*The Minister of the Word*

§ 10-1. This office is the first in the Church, both for dignity and usefulness. The person who fills it is given in Scripture different names expressive of his various duties. As he has the oversight of the flock of Christ, he is termed Bishop. As he feeds them with spiritual food, he is termed Pastor. As he serves Christ in the Church, he is termed Minister. As it is his duty to be serious and prudent and an example to the flock, and to govern well in the house and kingdom of Christ, he is termed Presbyter or Elder. As he is sent to declare the will of God to sinners and to beseech them to be reconciled to God through Christ, he is termed Ambassador. As he bears the glad tidings of salvation to the ignorant and perishing, he is termed Evangelist. As he stands to proclaim the Gospel, he is termed Preacher. As he expounds the Word, and by sound doctrine both exhorts and convinces the gainsayer, he is termed Teacher. As he dispenses the manifold grace of God and the ordinances instituted by Christ, he is termed Steward of the mysteries of God. These names do not indicate grades of office, but all describe one and the same officer.

§ 10-2. He that fills this office should be sound in the faith, apt to teach, and should possess a competency of human learning. He should exhibit sobriety and holiness of life becoming the Gospel. He should be a man of wisdom and discretion. He should rule his own house well. He should have a good report of them that are outside the Church.

§ 10-3. As the Lord has given different gifts to the Ministers of the Word, and has committed to them various works to execute, the Church is authorized to call and appoint them to labor as Pastors, Teachers, and Evangelists, and in such other works as may be needful to the Church, according to the gifts in which they excel.

§ 10-4. When a Minister, the Teaching Elder, is called by a congregation to labor as its Pastor, it belongs to his office to pray for and with his flock, as the mouth of the people unto God; to feed

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the flock, by reading, expounding, and preaching the Word; to direct the congregation in the worship of God; to administer the Sacraments; to invoke the blessing of God upon the people; to catechise the children and youth and to oversee the educational program of the church; to visit regularly the people, devoting special attention to the poor, the sick, the afflicted, and the dying; and, with the other Elders, to exercise the joint power of government.

§ 10-5. When a Minister is called by a Church court or agency of a court to labor as a Teacher in a theological seminary, college, university or school, it appertains to his office to take a pastoral oversight of those committed to his charge, and to be diligent in sowing the seed of the Word and gathering the fruit thereof, as one who cares for souls.

§ 10-6. When a Minister is called by a Presbytery to labor as an Evangelist, the Presbytery shall commission him to preach the Word and administer the Sacraments in other countries or in parts of the Church which have no regular ministration of the Word. The Presbytery may, by a separate act from that by which it commissioned him, entrust to the Evangelist for a period of twelve months the power to organize churches, and, until there is a Session in the church so organized, to instruct, examine, ordain, and instail Ruling Elders and Deacons therein, and to receive or dismiss members.

§ 10-7. When a Minister is called by a Church court or agency of a court to labor in an administrative capacity, or in the guidance of students attending a college or university, or in the Christian education program of the Church, or in military or institutional chaplaincy, or in any other field of service to the Church, it shall be incumbent on him to make full proof of his ministry by disseminating the Gospel for the edification of the Church.

## CHAPTER 11

*The Ruling Elder*

§ 11-1. As there were Elders of the people for the government of the Old Testament Church, so under the New Testament Christ has furnished others beside the Ministers of the Word with gifts and commission to govern when called thereunto. These officers are the Ruling Elders.

§ 11-2. Ruling Elders, the immediate representatives of the people, are chosen by them. Together with the Ministers, or Teaching Elders, they exercise government and discipline, and take the oversight of the spiritual interests both of the particular church and of the Church generally when appointed to represent their churches in the higher courts. In all the courts of the Church these Ruling Elders possess the same authority and the same eligibility to office as the Ministers of the Word.

§ 11-3. Those who fill this office should be blameless in life and sound in the faith, persons of wisdom and discretion. By the holiness of their walk and conversation they should be examples of Christian faith.

§ 11-4. It belongs to their office, both individually and jointly, to watch diligently over the congregation committed to their charge, that no corruption of doctrine or of morals enter therein. Evils which they cannot correct by private admonition they should bring to the notice of the Session. They should visit the people at their homes, especially the sick; they should instruct the ignorant, comfort the mourner, nourish and guard the children of the Church. They should pray with and for the people. They should be careful and diligent in seeking the fruit of the preached Word. They should inform the Pastor of cases of sickness, affliction and awakening, and of all others which may need his special attention. They should cultivate their aptness to teach the Word, and should supply places destitute of the regular ministry of the Word with the worship of God. All those duties which private Christians are bound to discharge by the law of love are especially incumbent upon the Ruling Elders by reason of their vocation to office, and are to be discharged by them as official duties.

## CHAPTER 12

*The Deacon*

§ 12-1. The office of Deacon as set forth in Scripture is one of sympathy and service after the example of Christ. It expresses the love and fellowship of saints who bear one another's burdens.

§ 12-2. To the office of Deacon, which is spiritual in nature, should be chosen persons of spiritual character, honest repute, exemplary lives, brotherly love, warm sympathies, and sound judgment.

§ 12-3. It is the duty of the Deacons, first of all, to minister to those who are in need, to the sick, to the friendless, and to any who may be in distress. It is their further duty to develop the grace of liberality in the members of the church; to plan, in collaboration with the Session, the objects toward which the offerings of the congregation shall regularly be directed; to plan effective methods for gathering these offerings; to receive other offerings as directed by the Session; and to see that all offerings are distributed among the objects toward which they have been contributed. It is their duty also to have the care of the property of the congregation, both real and personal, and to keep in proper repair the church edifice and other buildings belonging to the congregation. In matters of special importance affecting the property of the church they can take final action only with the consent of the congregation. The regular budget and other important financial matters require the approval of the Session.

§ 12-4. The Deacons of a particular church shall be organized as a Board, of which the Pastor and Associate Pastor shall be advisory members. The Board shall elect a Chairman and a Secretary from among its own number. The Secretary shall keep a record of the Board's proceedings, and shall submit its minutes to the Session at least once every six months and at other times upon the request of the Session. The Board shall appoint a Church Treasurer who shall be responsible to the Board. The Church Treasurer shall be entrusted with the regular offerings of the congregation. He shall keep a record of all funds in his cus-

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tody for inclusion in the minutes of the Board. The Board shall meet at regular intervals, or upon the call of its Chairman, or whenever requested by the Session. It shall meet at least quarterly. The Board of each church shall determine the number necessary for a quorum.

§ 12-5. As the whole church is under the jurisdiction of the Session, the Deacons, in the discharge of their duties, are under the supervision and authority of the Session. If it seems necessary or wise for the best interest of the church, the Session may void or amend any action of the Board of Deacons, or return it to them for further consideration. It is desirable that the Session and the Board of Deacons meet in joint session once a quarter to confer on matters of common interest. At such meetings the Moderator of the Session shall preside. The joint meeting can make no binding decision, but the Session and Board of Deacons can act separately on matters committed to the care of each. A congregation by a majority vote may elect not to use the office of Deacon. In such a case, or in the case where Deacons cannot be secured, the function of the office shall always be preserved and shall devolve upon the Ruling Elders and the Session. [See § 15-6.]

§ 12-6. Deacons may properly be appointed by the higher courts to serve on committees, or as trustees or treasurers.

§ 12-7. As expedient the Session may select and appoint godly persons of the congregation to assist the Deacons in ministering to the sick, to the aged, to widows, to orphans, to prisoners, and to others in any distress or need, and in exercising care of the church property. They may also aid the Deacons in collecting and distributing the offerings of the people.

## PART IV

## Doctrine of Church Courts

## CHAPTER 13

*Church Courts in General*

§ 13-1. A definite form is necessary for the government of the Church. It is expedient and agreeable to Scripture and to the practice of the early Christians that the Church be governed by representative assemblies, composed exclusively of Presbyters or Elders. These assemblies, called Church courts, in the order of their regular gradation, are: Church Sessions, Presbyteries, Synods, and the General Assembly. Officers for each of these courts are a Moderator and a Clerk or Clerks as may be determined by the court.

§ 13-2. The Pastor is Moderator of the Church Session. The Moderator of the Presbytery shall ordinarily be elected at each stated meeting. A Presbytery may decide to elect its Moderator for one year, but he must be a member of the court to serve. The Moderators of the Synod and General Assembly shall be elected at each stated meeting and must be members of the respective court. In these higher courts the Moderator shall serve until his successor is elected. In the case of death or inability of the Moderator to serve, the immediate past Moderator shall serve as Moderator until a Moderator shall be elected at the next stated meeting of the court; or, in the case of his inability to serve, the next previous Moderator shall assume the duties of the office; and this procedure shall be followed until a Moderator has been obtained to complete the term.

§ 13-3. In case of the absence of a Moderator of Presbytery who has been elected for a year, the last Moderator present, or in case of the absence of any former Moderator, the Minister in attendance of longest service in the Presbytery, shall preside.

§ 13-4. The Moderator has all authority necessary for the preservation of order and for the proper and expeditious conduct of all business before the court, and for convening and adjourning



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the court according to its own ruling. In any emergency he may, by circular letter, change the time or place, or both, of meetings to which the court stands adjourned, giving reasonable notice thereof.

§ 13-5. A Clerk, or Clerks, shall be elected by the Session, the Presbytery, the Synod, and the General Assembly to serve for a definite period, as determined by the court. The Clerk shall be a member of the Session. In the higher courts the Clerk must be eligible for membership in the court. It is the duty of the Clerk to record the transactions, to preserve the records carefully and to furnish extracts from them when required by his own or a higher court. Such extracts, certified by the Clerk, shall be evidence to any ecclesiastical court and to every part of the Church.

§ 13-6. Meetings of Church courts should be opened and closed with prayer.

§ 13-7. The expenses of a Minister or a Ruling Elder in attendance on a higher court shall be defrayed by the particular church or churches or agency of the Church which he serves, unless the higher court, to which he is accredited, pays these expenses out of its own treasury. The expenses of Commissioners to the General Assembly shall be paid out of the treasury of the General Assembly.

## CHAPTER 14

*Jurisdiction of Church Courts*

§ 14-1. Church courts are altogether distinct from the government of the state and possess no civil jurisdiction or power to inflict civil penalties.

§ 14-2. Church courts have jurisdiction only for the purpose of serving Christ and declaring his will as it is related to his doctrine and law, to the good order of the Church and to the exercise of discipline.

§ 14-3. In the exercise of this jurisdiction:

- (1) A Church court can make no laws to bind the conscience, since Christ is the only Lord of conscience and the Scriptures are the only rule of faith and morals.

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(2) Church courts may frame symbols of faith, bear testimony against error in doctrine and immorality in practice within or without the Church, give counsel in matters of conscience, and decide issues properly brought before the court.

(3) Church courts have power to establish rules for the government, discipline, worship, and extension of the Church. These rules must be agreeable to the doctrines relating thereto in the Scriptures, since only the circumstantial details of these matters are left to the Christian prudence and wisdom of Church officers and courts.

(4) Church courts possess the right of requiring obedience to the laws of Christ. Hence, they admit those qualified to sealing ordinances and to their respective offices and they exclude the disobedient from their offices or from sacramental privileges; but the highest censure to which their authority extends is to cut off the contumacious and impenitent from the congregation of believers.

(5) Church courts possess whatever administrative authority is necessary to give effect to these powers.

§ 14-4. All Church courts possess the same kinds of rights and powers, and differ only as the Constitution may provide.

§ 14-5. For the orderly and efficient dispatch of the Church's business it is necessary that the sphere of action of each court should be distinctly defined. The Church Session exercises jurisdiction over a single church; the Presbytery over what is common to the Ministers, Sessions, and churches within a prescribed district; the Synod over what belongs in common to three or more Presbyteries, and their Ministers, Sessions and churches; and the General Assembly over such matters as concern the whole Church. The jurisdiction of these courts is limited by the express provisions of the Constitution. Every court has the right to resolve questions of doctrine and discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to the injury of the peace, purity, or progress of the Church. Although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation. Dis-

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puted matters of doctrine and order, arising in lower courts, may be brought to higher courts for decision.

These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate Church court.

§ 14-6. The acts and decisions of a lower court are brought under the supervision of a higher court in one or another of the following modes: (1) Review and Control; (2) Reference; (3) Appeal; (4) Complaint.

## CHAPTER 15

*The Church Session*

§ 15-1. The Church Session consists of the Pastor (and Associate Pastor) and the duly elected and installed Ruling Elders currently on active service in that congregation. The Pastor is the Moderator of the Session. An Associate Pastor is also a member of the Session and may substitute for the Pastor as Moderator of the Session at the discretion of the Pastor and Session. All members of the Session, including the Pastor and Associate Pastor, are entitled to vote.

§ 15-2. If there are three or more Ruling Elders, the Pastor and two Ruling Elders shall constitute a quorum. If there are less than three Ruling Elders, the Pastor and one Ruling Elder shall constitute a quorum.

When a church has no Pastor, or in cases of emergency requiring immediate action when the Pastor is necessarily absent, and there are five or more Ruling Elders, three shall constitute a quorum; if there are less than five Ruling Elders, two shall constitute a quorum.

If there is only one Ruling Elder, he does not constitute a Session, but he should take spiritual oversight of the church, should represent it at Presbytery and Synod, should grant certificates of dismission, should call meetings of the congregation, if needed, and should report to the Presbytery any matter needing the action of a Church court.

Any Session, by a majority of its members, may fix its own

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quorum, provided that it is not smaller than the quorum stated in this section.

§ 15-3. In the absence of the Pastor, if an emergency requiring immediate action should arise, the Session may elect one of its members to preside. Should prudential reasons at any time make it advisable for a Minister other than the Pastor to preside, the Pastor may, with the concurrence of the Session, invite a Minister of the same Presbytery to perform this service.

§ 15-4. When a church is without a Pastor, the Moderator of the Session shall be a Minister of the Presbyterian Church in the United States appointed for that purpose by the Presbytery, or one invited by the Session to preside on a particular occasion. When it is not feasible to procure such a Moderator, the Session may elect one of its own members to preside. In judicial cases, the Moderator shall be a Minister of the Presbytery to which the church belongs. [See § 25-6.]

§ 15-5. The Church Session shall hold stated meetings at least quarterly. The Pastor has the power to call a meeting of the Session when he may judge it necessary. He shall always convene it when requested to do so by any two of the Ruling Elders. The Session shall also convene when directed to do so by the Presbytery. When there is no Pastor or when emergencies arise requiring immediate action while the Pastor is necessarily absent, the Session may be convened by two Ruling Elders. Except for these cases, the Session may not be convened by Ruling Elders. Reasonable notice of all called meetings is required when other than routine business is to be transacted. [See § 13-6.]

§ 15-6. The Church Session is charged with maintaining the spiritual government of the church. For this purpose it has power:

- (1) To inquire into the knowledge and Christian conduct of the church members under its care.
- (2) To admonish, to rebuke, to suspend or exclude from the Lord's Supper those found delinquent, according to the Rules of Discipline.
- (3) To instruct parents who are communicants to present their children for Baptism.
- (4) To receive members into the communion of the church

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upon profession of faith in Jesus Christ, upon presentation of satisfactory certificate of dismission, or, in the absence of such certificate, upon reaffirmation of faith in Jesus Christ.

(5) To grant certificates of dismission to other churches, which, when given to parents shall always include the names of their children, specifying whether they have been baptized. [See § 8-3, 4, 6.]

(6) To instruct, examine, ordain, and install Ruling Elders and Deacons on their election by the church.

(7) To require these officers to devote themselves to their responsibility.

(8) To supervise the work of the Board of Deacons and examine the records of their proceedings. [See § 12-3, 5.]

(9) To develop and supervise the church school and the educational program of the church.

(10) To exercise, in accordance with the Directory for Worship, authority over the time and place of the preaching of the Word and of the administration of the Lord's Supper, over all other religious services, over the music in the services, and over the uses to which the church building and associated properties may be put.

(11) To assemble the people for worship when there is no Minister.

(12) To order collections for Christian purposes.

(13) To devise suitable measures for advancing the spiritual interests of the Church and of the congregation.

(14) To observe and carry out the lawful injunctions of the higher courts.

(15) To select from among the Ruling Elders representatives to the Presbytery and the Synod, who shall, on their return, make report of their participation.

(16) To propose to the Presbytery such measures as may be of common advantage to the whole Church.

All organizations within the particular church shall be subject to the review and control of the Session. Each organization shall, if requested, render stated reports to the Session.

§ 15-7. Every Session shall keep an accurate record of its proceedings which shall be submitted at least once every year to Presbytery for its review and control.

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§ 15-8. Every Session shall also keep an accurate record of baptisms, of non-communing members, of those admitted to the Lord's Table, of those received from other churches, of those dismissed to other churches, of those placed upon the inactive roll, and of the deaths and marriages of church members.

## CHAPTER 16

*The Presbytery*

§ 16-1. The Presbytery consists of its member Ministers and all the churches within a certain district. When a Presbytery meets each church shall be represented by a Ruling Elder commissioned by the Church Session. A church whose communicants exceed 750 shall be represented by two Ruling Elders and shall be entitled to one more Ruling Elder for each additional 750 communicants.

§ 16-2. A Minister shall hold his membership in the Presbytery where his work is located, unless there are reasons satisfactory to his Presbytery why he should not do so. The Presbytery may give a Minister permission to labor outside its geographical bounds and in work not under its jurisdiction; but no Minister shall engage in work which is within the bounds and which falls properly under the jurisdiction of another Presbytery without its consent. When a Minister, by reason of age or infirmity, is no longer able to serve the Church in the active ministry of the Gospel, the Presbytery may designate him as Honorably Retired. Ministers honorably retired shall ordinarily continue to hold membership in the Presbytery by which they were retired. A Minister who is serving abroad as a missionary under the Board of World Missions may become a member of a Presbytery of the church to which he is related in missionary service. His Presbytery, in such case, shall retain his name on its roll, and he shall continue to be a full and responsible member of it, subject to its jurisdiction, in every respect.

§ 16-3. Each Ruling Elder before being enrolled as a member of Presbytery shall present a certificate of commission from the Session of the church which he represents, similar to that required by the General Assembly. Presbytery may waive this requirement at its discretion.

§ 16-4. Three Ministers belonging to the Presbytery, together



with one Ruling Elder, being met at the time and place appointed, shall be a quorum competent to proceed to business. However, any Presbytery, by a majority vote of those present at a stated meeting, may fix its own quorum, provided it is not smaller than the quorum stated in this section.

**§ 16-5.** Every Minister seeking admission to a Presbytery shall be examined on his Christian experience and on his views in Theology, the Sacraments, and the Government of the Presbyterian Church.

Should the Presbytery fail to sustain the examination of a Minister seeking admission from another Presbytery, the Presbytery to which he seeks admission shall, before adjournment of that meeting, enter a statement in its minutes of the reasons for such refusal and give the Minister under examination the opportunity to enter an answer to such statement in the same minutes. If, at that meeting of Presbytery, as many as two members of that meeting of Presbytery request the Presbytery to do so, the Presbytery shall within ten days meet and reexamine such Minister and cause a verbatim transcript of the examination to be made.

In addition a Minister who comes from another denomination shall first be required to present evidence of having obtained a baccalaureate degree or its equivalent from a standard four-year college or university, together with a theological degree, based on not less than three years' residence, or its equivalent, from a theological seminary under the control of our Church or another theological seminary which the Presbytery must approve in his particular case. He shall also answer in the affirmative before the Presbytery the questions put to candidates at their ordination and shall have been regularly called to a pastorate or to other labor in this denomination. He shall also give satisfactory evidence of his knowledge of the organizational structure and program of the Presbyterian Church in the United States.

The Presbytery shall not waive any of the foregoing educational requirements for applicants coming from other denominations except in extraordinary cases which shall require consent of three-fourths of members of Presbytery present, and shall be voted on only in a meeting of Presbytery subsequent to one in which motion is made, and shall have full record of such action and the reason therefor recorded in the minutes of Presbytery.

**§ 16-6.** The Presbytery shall cause to be transcribed, in some

convenient part of the book of records, the obligations required of Ministers at their ordination, which shall be subscribed by all before being admitted to membership, in the following form, namely: "I, . . . . ., do sincerely receive and subscribe to the above obligation as a just and true exhibition of my faith and principles, and do resolve and promise to exercise my ministry in conformity thereunto."

**§ 16-7.** The Presbytery has power:

- (1) To receive and decide references, appeals and complaints brought before it according to constitutional procedures.
- (2) To assume original jurisdiction in cases in which a Church Session cannot exercise its authority.
- (3) To review the records of Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church.
- (4) To see that the lawful injunctions of the higher courts are obeyed.
- (5) To visit churches for the purpose of inquiring into and redressing the evils that may have arisen in them. When necessary for the welfare of the Church the Presbytery may dissolve the active relationship between an Elder or Deacon and the church, provided there has been a hearing which affords procedural safeguards as in cases of process.
- (6) To unite or divide churches, at the request of the members thereof.
- (7) To organize new churches.
- (8) To receive and dismiss churches.
- (9) To dissolve churches.
- (10) To control the location of new churches and of churches desiring to move to new locations.
- (11) To take special oversight of churches without Pastors.
- (12) To receive under its care Candidates for the Ministry.
- (13) To ordain, receive, dismiss, install, remove, and judge Ministers.
- (14) To establish the pastoral relationship; and to dissolve it at the request of one or both of the parties, or, when it finds that the interests of religion imperatively demand it, following a hearing which provides procedural safeguards as in cases of process.
- (15) To set apart Ministers to labor as Teachers, Evangelists, and in other works proper to the Ministry of the Gospel.

- (16) To require Ministers to devote themselves diligently to their sacred calling and to censure the delinquent.
- (17) To devise measures for the enlargement of the Church within its bounds.
- (18) To condemn erroneous opinions which injure the purity or peace of the Church.
- (19) To order whatever pertains to the spiritual welfare of the churches under its care.
- (20) To institute and superintend the agencies necessary for its work.
- (21) To select commissioners to the General Assembly.
- (22) To propose to the Synod or to the Assembly such measures as may be of common advantage to the whole Church.

§ 16-8. The Presbytery shall keep a full and accurate record of its proceedings, and shall send it up to the Synod annually for review. It shall report to the Synod and the General Assembly every year the condition and progress of religion within its bounds during the year; and all the important changes which may have taken place, such as the ordinations, the receiving or dismissing of members, the removal of members by death, the union and the division of churches, and the formation of new ones.

§ 16-9. The Presbytery shall hold stated meetings at least twice a year. When any emergency shall require a meeting earlier than the time to which the Presbytery stands adjourned, the Moderator shall, at the request, or with the concurrence, of two Ministers and of two Ruling Elders representing at least two churches, call a special meeting. Should the Moderator be for any reason unable to act, the Stated Clerk shall, under the same requirements, issue the call. If both Moderator and Stated Clerk are unable to act, any three Ministers and two Ruling Elders representing at least two churches shall have power to call a meeting. Notice of the special meeting shall be sent not less than ten days in advance to each Minister and to the Session of every church without a Pastor. In the notice the purpose of the meeting shall be stated, and no business other than that named on the notice is to be transacted. The Presbytery shall also convene when directed so to do by the Synod, for the transaction of designated business only. [See § 13-6.]

§ 16-10. Ministers in good standing in other Presbyteries, or in any other Christian Church, being present at any meeting of

Presbytery, may be invited to sit as visiting Ministers. It is proper for the Moderator to introduce these Ministers to the Presbytery. This provision shall also apply to the Synod and General Assembly. [See § 2-2.]

§ 16-11. When a Presbytery dismisses a Minister or Candidate, the certificate sent to the other Presbytery shall bear its name and shall be valid testimony of good standing for no more than one year. The Minister or Candidate remains under the jurisdiction of the Presbytery dismissing him until received by the other.

## CHAPTER 17

### *The Synod*

§ 17-1. The Synod consists of all the churches in a district comprising at least two Presbyteries and the Ministers who are members of the included Presbyteries.

The Synod may choose to organize itself in one of the following ways:

- (1) When a Synod meets, each church shall be represented by a Ruling Elder commissioned by the church Session. A church whose communicants exceed 1,500 shall be represented by two Ruling Elders and shall be entitled to one more Ruling Elder for each additional 1,000 communicants. All Ministers of the Presbyteries of the Synod shall be members of Synod.
- (2) When a Synod meets each Presbytery shall be represented by commissioners chosen by the Presbytery. Their numbers shall be in fixed ratio to the number of commissioners each Presbytery is entitled to send to the General Assembly and in no case shall the ratio be less than a multiple of three. The Synod shall set the ratio figure. There shall be an equal number of Ministers and Ruling Elders.

§ 17-2. Each Ruling Elder before being enrolled as a member of Synod shall present a certificate of commission from the Session of the church which he represents, similar to that required by the General Assembly. Synod may waive this requirement at its discretion.

§ 17-3. The Synod shall meet at least once each year. Seven Ministers belonging to it, who shall convene at the time and place of meeting, with at least three Ruling Elders, shall be a quorum.

provided not more than three of the said Ministers belong to one Presbytery. In the case of a Synod composed of only three Presbyteries, any seven Ministers representing any two Presbyteries, together with three Ruling Elders, shall be a quorum. When a Synod is composed of only two Presbyteries, three Ministers from each of the two Presbyteries and one Ruling Elder from each of the two Presbyteries shall constitute a quorum. [See § 13-6; 16-10.]

§ 17-4. When any emergency shall require a meeting of the Synod earlier than the time to which it stands adjourned, the Moderator shall, at the request or with the concurrence of ten Ministers and ten Ruling Elders, representing at least three Presbyteries, call a special meeting. When a Synod is composed of only two Presbyteries the Moderator shall, at the request or with the concurrence of four Ministers and four Ruling Elders from each of the two Presbyteries, call a special meeting. Should the Moderator be for any reason unable to act, the Stated Clerk shall, under the same requirements, issue the call. If both the Moderator and the Stated Clerk are unable to act, the most recent Moderator shall, under the same requirements, issue the call. Notice of this special meeting shall be sent not less than fifteen days in advance to each Minister and to the Session of every church without a Pastor. In the notice the purpose of the meeting is to be stated and no other business than that named in the notice is to be transacted. The Synod shall also convene when directed to do so by the General Assembly, for the transaction of designated business only.

§ 17-5. The Synod has power:

- (1) To receive and decide all references, appeals and complaints regularly brought up from the Presbyteries.
- (2) To review the records of the Presbyteries and redress whatever they may have done contrary to order.
- (3) To take effectual care that they observe the Constitution of the Church and that they obey the lawful injunctions of the higher courts.
- (4) To establish new Presbyteries and unite or divide those which were before established.
- (5) To appoint Ministers to such work proper to their office as may fall under its own particular jurisdiction.
- (6) To take such order with respect to the Presbyteries, Sessions and churches under its care as may be in conformity with the Word of God and the Constitution, and may tend to promote the edification of the Church.

- (7) To organize measures for advancing the prosperity and enlargement of the Church within its bounds.
- (8) To institute and superintend the agencies necessary for its work.
- (9) To propose to the General Assembly such measures as may be of common advantage to the whole Church.

§ 17-6. It shall be the duty of the Synod to keep full and accurate records of its proceedings, to submit them annually to the inspection of the General Assembly, and to report to it the number of its Presbyteries, the number of communing members therein, and all important changes which may have occurred within its bounds during the year.

## CHAPTER 18

### *The General Assembly*

§ 18-1. The General Assembly is the highest court of this Church and represents in one body all the churches thereof. It bears the title of **THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES**, and constitutes the bond of union, peace and correspondence among all its congregations and courts.

§ 18-2. The General Assembly, which is a permanent court, shall meet at least annually, and shall consist of Commissioners from the Presbyteries in the following proportion, namely: Every Presbytery shall be entitled to send one Minister and one Ruling Elder; but if the number of communicants in its churches and Ministers on its roll together be over 5000, it shall be entitled to send an additional Minister and Ruling Elder; and in like proportion for every 5000 communicants and Ministers. [See § 16-10.]

§ 18-3. When any emergency shall require a meeting of the General Assembly earlier than the time to which it stands adjourned, the Moderator shall issue a call for a special meeting at the request, or with the concurrence, of twenty-seven Commissioners who had seats in the Assembly at its preceding meeting, of whom at least eighteen shall be Ministers and at least seven Ruling Elders, representing at least twelve Presbyteries under the jurisdiction of at least five Synods.

Should the Moderator be for any reason unable to act, the



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§ 18-6. The General Assembly shall have power:

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- (1) To decide all references, appeals and complaints regularly brought before it from the lower courts.
- (2) To bear testimony against error in doctrine and immorality in practice, injuriously affecting the Church.
- (3) To decide finally in all controversies brought before it respecting doctrine, order and discipline.
- (4) To give its advice and instruction, in conformity with the Constitution, in all cases submitted to it.
- (5) To review the records of the Synods.
- (6) To take care that the lower courts observe the Constitution.
- (7) To redress whatever the lower courts may have done contrary to order.
- (8) To organize measures for advancing the prosperity and enlargement of the Church.
- (9) To establish new Synods and to unite or divide those which were before established.
- (10) To institute and superintend the agencies necessary in the general work of the Church.
- (11) To appoint Ministers to such labors as fall under its jurisdiction.
- (12) To suppress schismatical contentions and disputations, according to the rules provided therefor.
- (13) To receive under its jurisdiction, with the consent of three-fourths of the Presbyteries, other ecclesiastical bodies whose organization is conformed to the doctrine and order of this Church. [See § 30-3.]
- (14) To authorize Synods to exercise similar power in receiving bodies suited to become constituents of those courts, and lying within their geographical bounds respectively.
- (15) To superintend the affairs of the whole Church.
- (16) To correspond with other Churches.
- (17) To unite with other ecclesiastical bodies whose organization is conformed to the doctrines and order of this Church, such union to be effected by a mode of procedure defined elsewhere in the Form of Government. [See § 30-3.]
- (18) To recommend measures for the promotion of charity, truth, and holiness through all the churches under its care.

§ 18-7. The whole business of the Assembly being finished, and the vote taken for final adjournment, the Moderator shall say

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from the chair: "By virtue of the authority delegated to me by the Church, I do now declare that the General Assembly of the Presbyterian Church in the United States is now adjourned, to convene at ..... on the ..... day of ....., A.D. ....," after which he shall pray and return thanks, and pronounce, or cause to be pronounced, on those present, the apostolic benediction.

## CHAPTER 19

*Committees and Commissions of Church Courts*

§ 19-1. A Committee of a Church court is appointed either to study and recommend, or to carry into effect specific directions or decisions already made by the court. Its recommendations require action by the court; but its report of performing actions assigned by the court and of executing the court's decisions needs to receive no further action by the court.

§ 19-2. A Commission is given responsibility to make decisions for the court in circumstances where it is impractical or inexpedient for the entire court to act. The appointing court shall state specifically the scope of the power given to a Commission.

A Commission may be erected to perform either administrative or judicial functions. The administrative functions ordinarily entrusted to a Commission are: (1) to visit portions of the Church affected with disorder to inquire into and settle the difficulties therein; (2) to organize new churches; (3) to ordain Ministers and to install them in permanent pastoral relations. The judicial functions entrusted to a Commission are to handle and decide a case of process for the court according to the Rules of Discipline.

A Commission may be assigned additional duties as a Committee, the reporting of which shall be handled as is a Committee's report.

§ 19-3. A Commission which has been appointed to perform the administrative function of visiting a portion of the Church affected with disorder to inquire into and settle the difficulties therein shall always hold hearings which provide procedural safeguards as in cases of process, following in its procedure the re-

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quirements of the Rules of Discipline as far as these are applicable, and shall provide the court with a proper Record of the matter. [See R.D. § 104-2, 8, 9; § 105-1, 3 through 6, 8, 9, 11 through 20; § 106-1 through 14; § 118-1 through 5. Also § 16-7(5); 21-4.]

§ 19-4. A Judicial Commission may be appointed by the Presbytery or the Synod to handle and decide any case of process coming before the court. When the Presbytery or Synod is the court of original jurisdiction, any member of the court may be appointed to the Commission except those immediately involved in the case. When the case has arisen in a lower court and comes before the higher court by one of the constitutional methods, the Commission shall be appointed from among those not members of that court from which the case has come.

The Commission shall try the case in the manner prescribed by the Rules of Discipline. It shall submit to the court a full Record of the case and the judgment rendered. Its minutes shall be entered on the minutes of the court as the action and judgment of the court itself. [See R.D. § 105-19 and 118-2.]

§ 19-5. A Commission of Presbytery shall consist of at least three Ministers and three Ruling Elders. A Commission of Synod or of the General Assembly shall consist of at least six Ministers and six Ruling Elders. The quorum of a Commission shall be at least two-thirds of its membership.

## CHAPTER 20

*The Permanent Judicial Commission of the General Assembly*

§ 20-1. The General Assembly shall elect a Permanent Judicial Commission composed of six ministers and six ruling elders. To the extent permitted by the number of Synods, from time to time established by the General Assembly, at least one member shall reside in each Synod, and membership shall be equitably apportioned among the Synods. Four members shall be elected each year to serve a term of three years. No person who has served two terms, or portions thereof, shall be eligible for re-election. No member of any other commission, permanent committee, or agency of the General Assembly, and no person holding an official or employed relationship to the General Assembly or any of its agencies shall be eligible for

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membership on the Permanent Judicial Commission until he shall have resigned such other relationship.

§ 20-2. The Stated Clerk of the General Assembly shall refer to the Permanent Judicial Commission all questions rising from courts of the Church or from individuals requiring an interpretation of The Book of Church Order by the General Assembly, all overtures requesting amendment of The Book of Church Order and all cases of process coming before the General Assembly.

§ 20-3. The quorum of the Permanent Judicial Commission shall be eight members. A member of the Commission who is a member of a court from which a case of process has come before the General Assembly has the privilege of the floor when the case is heard by the Commission, but shall not have a vote in the determination of the case. A member of the Commission who has not been present throughout the hearing shall not have a vote in the decision.

§ 20-4. The necessary expenses of this Commission shall be provided for by the General Assembly. It shall elect annually from its members a chairman and a secretary.

§ 20-5. The Permanent Judicial Commission shall meet as directed by the General Assembly, provided that, if business has arisen which it must transact for the Assembly, the Commission shall meet in ample time to make its report. The Commission shall begin to report its recommendations and preliminary judgments on the second day of the General Assembly's session. [See R.D. § 116-9.]

§ 20-6. On questions of interpretation of The Book of Church Order sought from the General Assembly, the Commission shall act as a Committee. It shall report to the General Assembly recommending the interpretation it thinks correct and giving the reasons for its opinion.

§ 20-7. On questions of amending the Constitution the Commission shall act as a Committee. It shall report to the General Assembly all pertinent facts, particularly those concerning the relation of the proposed amendment to the Constitution as a whole, and shall recommend to the General Assembly concerning

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the proposed amendment. The Assembly cannot consider an amendment until there has been opportunity for a report from the Commission.

§ 20-8. In cases of process referred to it, the Permanent Judicial Commission shall have the powers prescribed by, and shall conduct its proceedings according to, the Constitution and the rules governing the trial of such cases before the General Assembly. The decision of the Permanent Judicial Commission in any case referred to it shall be merely the preliminary judgment in that case. This decision shall be binding on each party therein until the General Assembly shall hear, and either confirm or reject the preliminary judgment. The preliminary judgment shall be presented to the General Assembly in the form of an opinion setting forth the findings of fact and the conclusions derived therefrom.

§ 20-9. The secretary of the Permanent Judicial Commission shall keep a full and correct record of the proceedings and the preliminary judgment of the Commission in each case of process referred to it; shall with the chairman certify in writing such record and judgment to be correct; and shall file such record and judgment with the Stated Clerk of the General Assembly. The Stated Clerk of the General Assembly shall transmit to each party in the case a certified copy of the judgment if confirmed by the General Assembly, and shall preserve it as a part of the records of the court.

§ 20-10. The General Assembly shall hear the preliminary judgment and any written dissenting opinion from a member of the Permanent Judicial Commission. Opportunity shall be given for questions and any necessary clarifications. The General Assembly shall then, without debate upon the merits of the case, vote upon the question: "Shall the preliminary judgment of the Permanent Judicial Commission be made the final judgment of the General Assembly?" This question shall not be subject to amendment.

§ 20-11. If a majority of the General Assembly vote to confirm, the Moderator shall declare that the preliminary judgment of the Permanent Judicial Commission is now the final judgment of the General Assembly, and the case is therewith closed.

§ 20-12. If the General Assembly fails to confirm by a majority



vote the preliminary judgment of the Permanent Judicial Commission on a judicial case, it shall then determine whether to commit the case to a special judicial commission or to try the case itself.

## CHAPTER 21

### *The Presbytery's Commission on the Minister and his Work*

§ 21-1. A commission shall be appointed by each Presbytery, to be known as the Presbytery's Commission on the Minister and His Work. This Commission shall consist of at least three Ministers and three Ruling Elders. The quorum of the Commission shall be two-thirds of the members.

Membership on this Commission shall be for a term of three years. Replacement of a member whose term has not expired shall be for the remainder of that term. Members shall be ineligible to serve more than two consecutive terms or portions of terms.

The necessary expense of this Commission shall be provided for by the Presbytery.

§ 21-2. This Commission shall function for the Presbytery as a Committee in the following ways:

(1) It shall be responsible for reporting to the Presbytery annually the type of work in which each Minister of the Presbytery is engaged, to the end that the Presbytery itself may more effectively require its Ministers to devote themselves diligently to their sacred calling, as provided in the Rules of Discipline. From every Minister who is performing work which is not under the jurisdiction of the Presbytery or a higher court it shall require an annual report stating the frequency and manner of his performing the duties of a Minister as described in Chapter 10-1. [See § 16-7(16), 107-8.]

(2) It shall be responsible for making recommendation to Presbytery regarding calls for the services of its Ministers. Every call for the services of a Minister or Candidate in a pastoral relation shall be placed in the hands of the Commission and presented by it to the Presbytery, with a report as to the call's being in order and a recommendation as to whether the call should be placed in the hands of the Minister or Candidate.

Every request of a Minister or Candidate for the Presbytery's approval of his accepting a task proper to the Ministry of the Word, though not in a pastoral relationship to a particular church, shall be made by the Minister or Candidate through the Commission, and shall by the Commission be reported to the Presbytery with recommendation for final action.

(3) It shall be responsible for counseling with Sessions regarding Stated Supplies, Interim Supplies and Occasional Supplies when a church is without a Pastor. A current list shall be kept of available Ministers honorably retired from active service and others not regularly serving in a pastoral relation. A list shall be kept of available Candidates under care of the Presbytery and other Candidates enrolled in theological seminaries under the control of that Synod of which the Presbytery is a part, and a list of Ruling Elders and other men qualified to supply pulpits.

The Session (or its representative) shall seek the counsel of the Commission before making arrangements for the supply of the church's pulpit during a period of vacancy.

The Presbytery shall not approve a Minister's being called to a permanent pastoral relationship by a church which he has served as Stated or Interim Supply, unless a period of six months has elapsed between the ending of such Supply relationship and the church's issuing a call to a permanent pastoral relationship.

The lists of Candidates, Ruling Elders and others shall be available for the use of churches which cannot secure a Minister as Stated or Occasional Supply.

(4) It shall be responsible for counseling with churches regarding pastoral calls.

To carry out this function the Commission shall consult with every Nominating Committee appointed by a church to recommend the calling of a Pastor or an Associate Pastor. It shall advise the church's committee regarding the merits, availability, and suitability of any man whose name is contemplated for nomination to the congregation, and shall have the privilege of suggesting names to the church's committee.

When a Session desires to call a Minister to serve in any of the functions properly performed by an Assistant Pastor, the Session (or its representative) shall seek the counsel of the Presbytery's Commission.

No call to a permanent pastoral relationship shall be in order for consideration by the Presbytery unless the church has received and considered the counsel of the Presbytery through its Commission before action is taken to issue a call.

In the case of a church receiving aid in supporting a Pastor, the Presbytery's Commission shall confer with both the church and that committee of the Presbytery charged with arranging such aid, before it shall recommend to the Presbytery that a call to such church or group of churches be placed in the hands of a Minister. The proper committee of the Presbytery shall present to the Commission on the Minister and His Work a statement of the Presbytery's expected support for a Pastor, which shall be attached to the call of the church.

§ 21-3. This Commission shall function for the Presbytery as an Administrative Commission to visit churches to inquire into and settle difficulties that have arisen therein. [See § 19-3.]

It shall serve as an instrument of Presbytery in promoting the peace and harmony of the churches, especially in regard to matters arising out of the relations between Ministers and churches. The Commission's purpose shall be to mediate differences and reconcile brethren, to the end that the difficulties may be corrected by the Session of the Church if possible, that the welfare of the particular church may be promoted, that the unity of the Church in Christ her Head may be made manifest.

The Commission shall exercise a wise discretion in determining when to take cognizance of information concerning difficulties within a church.

§ 21-4. The Commission shall proceed by the following steps:

*First*, the Commission, on its own initiative, shall bring its information to the attention of the Session of the church involved. It shall counsel with the Session as to the proper actions to be taken in correcting the reported difficulties.

*Second*, the Commission may offer its help as a mediator in case the Session either finds itself unable to settle the problems peaceably, or takes no steps toward settlement.

*Third*, the Commission may act to correct the difficulties if requested to do so by the parties concerned, or if this authority is granted by the Presbytery for the specific case. When so acting, the Commission on the Minister and His Work shall always hold

hearings which afford procedural safeguards as in cases of process, following in their procedure the requirements of the Rules of Discipline as far as these are applicable. [See R.D. § 104-2, 8, 9; § 105-1, 3 through 6, 8, 9, 11 through 20; § 106-1 through 14; § 118-1 through 5. Also § 16-7(5) and 19-3.]

## CHAPTER 22

### *Synod and General Assembly Committees on the Minister and His Work*

§ 22-1. To facilitate the work of the Commissions in the Presbyteries, a Synod may establish a Committee on the Minister and His Work.

§ 22-2. To assist the Commissions in the Presbyteries, their churches and Ministers, in the entire area of ministerial relationships, the General Assembly shall have a permanent Committee to be known as the Assembly's Committee on the Minister and His Work.

## Doctrine of Church Orders

### CHAPTER 23

#### *The Doctrine of Calling to Office in the Church*

§ 23-1. Calling to office in the Church is the act of God by his Holy Spirit. This calling is ordinarily made manifest through the inward testimony of a good conscience on the part of the person, the approbation of God's people on the part of the Church, and the concurring judgment of a lawful court of the Church.

§ 23-2. The government of God's people in the Church is representative. The right of God's people to elect their officers is inalienable. Therefore, no person can be placed over a church as Pastor, Associate Pastor, Ruling Elder or Deacon without the election of that church.

§ 23-3. Upon those whom God calls to bear office in his Church, he bestows gifts suitable to the discharge of their various duties. It is indispensable that, besides possessing the necessary gifts and the useful abilities both natural and acquired, everyone admitted to an office should be sound in the faith, and his life be according to godliness. Therefore, every candidate for office in the Church should be carefully examined and approved by the Church court by which he is to be ordained.

§ 23-4. Ordination is the authoritative admission of one duly called to an office in the Church of God, accompanied with prayer and the laying on of hands, to which it is proper to add the giving of the right hand of Christian fellowship.

Ordination to the office of Minister of the Word is an act of the Presbytery, performed by it either directly or through its proper agent.

Ordination to the office of Ruling Elder or of Deacon is an act of the Church Session. In the organization of a new church the Presbytery has power to ordain Ruling Elders and Deacons, either

### § 23-5

directly or through its proper agent, until that church possesses a Session competent to act. [See § 10-6.]

§ 23-5. No man shall be ordained to any office in the Church except to labor in some specific task.

Before a Candidate can be ordained to the Ministry of the Word he must have either received an orderly call from a particular church to labor in a pastoral relation, or have received a call to a specific work, approved by the Presbytery, in some other service proper to the Minister of the Word. [See § 10-3 ff.; 27-2.]

Before any one can be ordained to the Ruling Eldership or to the Diaconate he must have been regularly elected by the particular church in which he is member to serve that church in the functions of his office.

### CHAPTER 24

#### *Candidates for the Ministry of the Word*

§ 24-1. The welfare of the Church requires that some trial be previously made of persons who are to be ordained to the Ministry of the Word, in order that this sacred office may not be degraded by being committed to weak or unworthy persons, and that the Church may have an opportunity to form a better judgment respecting the gifts and abilities of those by whom they are to be instructed and governed.

For this purpose Presbyteries shall take under their care Candidates for the Ministry of the Word, and may permit them to preach the Gospel under supervision. After a competent trial of their gifts, and receiving from the churches a good report, the Presbytery may ordain them to the sacred office. No person shall be ordained without having first been a Candidate.

§ 24-2. A Candidate for the Ministry is a member of the Church in full communion who, believing himself to be called of God to preach the Gospel, submits himself to the care and guidance of the Presbytery in his course of study and of practical training to prepare himself for the office of Minister of the Word.

§ 24-3. Every person seeking the Ministry of the Word shall apply to the Presbytery which has jurisdiction of the church in which



he is a member, to be received under the care of that Presbytery. He shall first state his purpose to his Church Session. The Session shall advise with him and shall, at his request, furnish the Presbytery with a certificate of his membership and with testimonials of its judgment regarding his Christian character and promise of usefulness in the Ministry. He shall have been a member of that congregation for the six months preceding the filing of his application to the Presbytery.

Every applicant shall make his application to the Chairman of the Presbytery Committee charged with the care of Candidates at least two months before the meeting of the Presbytery which shall hear his request.

Upon receipt of the application the Committee shall inquire diligently into the Christian character and the physical, mental and spiritual qualifications of the applicant, and shall make a careful report to the Presbytery upon all points which would have bearing upon his promise of usefulness in the Ministry. The Committee shall recommend to the Presbytery whether or not the applicant should be received under its care.

§ 24-4. After the Presbytery has heard the report and recommendation of the Committee regarding an applicant, the Moderator shall examine him before the Presbytery as to his experience of Christian grace and his motives for seeking the Ministry of the Word.

When the Presbytery is satisfied as to the applicant's purpose and promise of usefulness in the Ministry, it shall proceed to receive him under its care after the following form:

The Moderator shall briefly state the approval given by the Church Session and the Presbytery to the applicant's desire to be received as a Candidate for the Ministry of the Word. He shall also state the necessity that this sacred office not be committed to unworthy persons, and the need for both the training and the trial of a Candidate's gifts before he may be ordained to the Ministry.

The applicant shall stand before the Moderator, who shall say: "The Presbytery of . . . . ., having approved your testimonials and sustained your examination, now requires you to make answer to the following questions:

"Do you, as far as you know your own heart, believe yourself to be called of God to the office of the Ministry of the Word?

"Do you promise, in reliance upon the grace of God, to maintain a Christian character and conduct, and to be diligent and faithful in making full preparation for this sacred Ministry?

"Do you promise to submit yourself to the proper supervision of the Presbytery in matters that concern your preparation for the Ministry?

"Do you desire now to be received by this Presbytery as a Candidate for the Ministry of the Word in the Presbyterian Church in the United States?"

The applicant, having answered these questions in the affirmative, shall then kneel, and prayer shall be had for the blessing of Almighty God upon him.

The Moderator, or someone appointed by him, shall give the Candidate a charge.

Then the applicant, together with the Presbytery, shall stand. The Moderator shall declare him acknowledged and received as a Candidate for the Ministry of the Word, and direct that his name be recorded on the Presbytery's Roll of Candidates for the Ministry.

The Moderator shall then extend to the Candidate the right hand of Christian fellowship, and the proceedings shall be closed with a benediction.

§ 24-5. A Candidate continues to be a private member of the church and subject to the government and discipline of the Church Session, but is under the oversight of the Presbytery in matters of his preparation for the Ministry.

The Presbytery shall show a constant and personal interest in him, and shall give him counsel and guidance in regard to his studies, his practical training, and the institutions of learning he should attend.

In no case may a Candidate omit from his course of study any of the subjects prescribed in the Form of Government as tests for ordination without obtaining the consent of the Presbytery. Where such consent is given the Presbytery shall record the fact and the reasons therefor. [See § 27-5.]

§ 24-6. For the development of his Christian character, for the service he can render, and for his more effective training, the Candidate, during his theological studies, should be authorized and encouraged by the Presbytery to conduct public worship, to ex-

pound the Scripture to the people, and to engage in other forms of Christian work. These forms of service should be rendered under the direction of the Presbytery, and also with the sanction and under the guidance of the Candidate's instructors during the time of his being under their instruction.

§ 24-7. A Candidate shall not undertake to serve a church which is without a Pastor unless he has the approval of the Presbytery having jurisdiction of the church.

§ 24-8. Every Candidate shall make a full report concerning his preparation for the Ministry annually, and at other times as the Presbytery shall require. The Presbytery shall secure from his instructors an annual report upon his Christian deportment, upon his diligence and progress in study, and upon his ability to serve the Church as demonstrated by success in the activities of his practical training.

§ 24-9. The Presbytery shall, upon the request of a Candidate who has transferred his membership to a church of another Presbytery, give him a certificate of dismissal to that Presbytery. The certificate of dismissal shall contain an extract of the record of his reception, and a commendation from the Presbytery, signed by the Clerk. A Candidate shall be allowed to withdraw from the care of the Presbytery upon his statement that he no longer feels called of God to the Ministry. The Presbytery may, for reasons which it deems sufficient, remove the name of a Candidate from its roll of Candidates. In such case it shall report its action and the reasons therefor to the Candidate, to the Session of his church, and to the institution of learning in which he is pursuing his studies.

§ 24-10. If the Presbytery judges that there are good and sufficient reasons why a person requesting to be received as a Candidate for the Ministry should not pursue the full course of academic and theological studies, the Presbytery may, by a vote of three-fourths of the members present, receive him under its care. In every such extraordinary case the Presbytery shall make a full record of its action and the reasons therefor. The Presbytery shall specify what study and practical training it judges necessary before it can examine him for ordination. It shall also specify the period it will

require the applicant to serve as a Candidate before it will proceed to examine him for ordination.

§ 24-11. In no case shall a Presbytery examine a person for ordination at the same meeting at which he applies to be received as a Candidate, unless he is being received by certificate from another Presbytery and has been called to work in the Presbytery.

§ 24-12. When a Candidate has been extended a call for his ministerial services within the bounds of another Presbytery, he may be dismissed to that Presbytery to be examined for ordination. When a Candidate who is under the care of some other Reformed body is issued a call by a congregation of the Presbyterian Church in the United States, he may be received as a Candidate by certificate.

§ 24-13. The Presbytery may grant to its Committee charged with the care of Candidates authority in a proper meeting of the Committee to approve dismissal of a Candidate to another Presbytery and to inform the Stated Clerk who may then dismiss the Candidate.

## CHAPTER 25

### *The Pastoral Relations of Ministers*

§ 25-1. The permanent pastoral relations which may exist between a Minister of the Word and a particular church are: Pastor, Associate Pastor, and Assistant Pastor.

The temporary pastoral relations which may exist between a Minister of the Word and a particular church are: Stated Supply, Interim Supply, and Occasional Supply.

§ 25-2. In each church there should be a Pastor who has the duty of offering the full ministry of the Word and Sacraments. With the Session he shall see that the order and discipline of the Church under Christ her Head are properly observed.

A Pastor shall be elected by a vote of the congregation, and the call extended shall follow the form outlined in the Form of Government. The terms of a call under which the relation of Pastor or Associate Pastor is established can be changed only by the congregation at a regularly constituted meeting and with the consent of the Presbytery and the Pastor or Associate Pastor.

The terms of a call under which the relation of Pastor or As-

sociate Pastor is established can be changed only with the consent of the Presbytery.

§ 25-3. A church may call other Ministers of the Word to labor with the Pastor in performing such pastoral duties as are needful for the edification of that church. These may be either Associate Pastors or Assistant Pastors.

(a) An Associate Pastor shall be elected by the vote of the congregation. The terms of the call shall follow the form outlined for the calling of a Pastor, and shall specify the particular functions which the Associate Pastor is to fulfill in the life of that church. This relation is established by installation, an act of Presbytery, and is dissolved only by the authority of Presbytery. Being elected by the congregation, an Associate Pastor is a member of the Session of that church.

The official relationship of an Associate Pastor to a church is not dependent upon that of the Pastor, but an Associate Pastor is not eligible to succeed the Pastor in a church which they serve together.

(b) An Assistant Pastor is called by the vote of the Church Session, but only after the Session has consulted the Presbytery through its Commission on the Minister and His Work. The terms of the call as extended by the Church Session shall follow the form outlined for the calling of a Pastor, and shall specify the particular functions which the Assistant Pastor is to fulfill in the life of that church. This relation, an agreement between the Church Session and the Assistant Pastor, is established by installation, an act of Presbytery, and is dissolved only by the authority of Presbytery. The Presbytery, acting through its Commission on the Minister and His Work, may dissolve the relationship upon the initiative of either the Church Session or the Assistant Pastor. Not being a Church officer elected by the congregation, the Assistant Pastor is not a member of the Session of that Church, but should be invited by the Session to be present at its meetings.

The official relationship of an Assistant Pastor to a church shall be reviewed by the Session when the relationship of the Pastor to that church is dissolved. An Assistant Pastor is not eligible to succeed the Pastor in a church which they serve to-

gether nor may he be called to be Associate Pastor in that church while the church is without a Pastor.

§ 25-4. When a church does not have a Pastor, or while the Pastor is unable to perform his duties, the Session should obtain the services of a Minister of this denomination in a temporary pastoral relation. [See § 25-6.]

(a) A Stated Supply is a Minister invited by the Church Session to preach the Word and administer the Sacraments, and to fulfill such pastoral duties as the Session thinks needful, for a definite period of not less than one month nor more than twelve months at a time. This relation is established only by an act of the Presbytery, after recommendation of its Commission on the Minister and His Work, and upon the request of the Church Session.

If the Stated Supply is a member of the Presbytery having jurisdiction of that church, the Presbytery may appoint him moderator of the Church Session during the period of his relationship to that church.

A Minister may not be called to be Pastor or Associate Pastor by a church which he has served as Stated Supply, unless six months have elapsed since the ending of the temporary relationship.

(b) An Interim Supply is a Minister invited by the Church Session to preach the Word and administer the Sacraments, and to fulfill pastoral duties, for a definite or an indefinite period while the church is seeking a Pastor. The Session may not secure an Interim Supply without seeking the counsel of the Commission on the Minister and His Work.

A Minister may not be called to be a Pastor or Associate Pastor of a church which he has served as Interim Supply, unless six months have elapsed since the ending of the temporary relationship.

(c) An Occasional Supply is a Minister invited by the Church Session to preach the Word and administer the Sacraments on a specified day or days. Before arranging for Occasional Supplies over a period when a church has no Pastor, the Session shall consult with the Presbytery through its Commission on the Minister and His Work. When it is not feasible to secure a Minister as a Stated, Interim or Occasional Supply, a Church Session may invite some Candidate, Ruling Elder, or other competent person to conduct the service of divine worship.



The Church Session may not secure any one Minister as Occasional Supply, or any other person to conduct divine worship, for longer than one month without seeking the counsel of the Commission on the Minister and His Work.

§ 25-5. When a Minister is called to labor as an Associate or an Assistant Pastor, or is invited to serve as Stated, Interim or Occasional Supply, those pastoral functions especially assigned as his duty in that church shall be clearly specified.

§ 25-6. In exceptional cases the Presbytery may approve one of its churches inviting a minister of another Reformed Church to serve in a temporary pastoral relation. Such a minister may moderate meetings of the Session, without the right to vote, when invited by the Session, except in judicial procedures; and may moderate meetings of the congregation, when elected by the congregation. [See also § 5-4; 15-4; and 25-4.]

## CHAPTER 26

### *The Calling of Ministers to a Definite Work*

§ 26-1. A church which desires to elect a Pastor or an Associate Pastor shall proceed after the following manner:

The Church Session shall call a congregational meeting to convene at the regular place of worship to elect a Nominating Committee, representative of the whole congregation, whose duty shall be to nominate a Minister to the congregation for election to the desired pastoral relation. Rather than elect a Nominating Committee representative of the whole congregation, the congregation may designate the Church Session as the Nominating Committee. Public notice of the time, place, and purpose of the meeting shall be given at public worship at least one week prior to the time of the meeting.

The Nominating Committee shall promptly confer with the Presbytery's Commission on the Minister and His Work. All names submitted to the Nominating Committee, with information as to the source of the suggestion, shall be referred to the Commission on the Minister and His Work for its advice.

When the Nominating Committee is ready to report, it shall so notify the Session, which shall call a congregational meeting at the regular place of worship for the purpose of acting on the re-

port of the Committee. Public notice of the time, place, and purpose of the meeting shall be given at public worship at least one week prior to the time of the meeting.

§ 26-2. When a congregation is convened for the election of a Pastor, the Church Session shall appoint one of their number to call the congregational meeting to order, to lead the people in solemn prayer for Divine guidance, and to preside until the congregation shall elect a Moderator.

For the orderly conduct of the election of a Pastor or an Associate Pastor, it is desirable that the congregation elect a Minister of the Presbyterian Church in the United States to preside. But if this is impracticable, they may elect any adult member of that church as Moderator for that meeting.

All communing members on the active roll of that particular church who are in good and regular standing, but no others, are entitled to vote. [See § 5-1.]

The Moderator shall determine whether a quorum of the congregation is present. He shall then put the question: "Are you ready to proceed to the election of a Pastor (or, of an Associate Pastor)?"

If they declare themselves ready, the Moderator shall hear the report of the Nominating Committee and declare the name submitted by the Committee to be in nomination. He shall then give opportunity for nominations from the floor. Both the nomination of the Committee and any nomination from the floor must have been previously submitted to the Presbytery's Commission on the Minister and His Work for its advice.

The vote may be taken by standing count, or, if the congregation prefer, by written ballot.

In every case, a majority of the votes cast shall be required to elect, and the minutes shall record the number favoring the call and the number opposing the call. A certification of this record shall be sent with the call to the Presbytery, and sent as information to the Minister to whom the call is addressed.

If it appears that a large minority of the voters are averse to the nominee, although he has received a majority of the votes cast, the Moderator shall raise the question whether the congregation should reconsider its vote.

§ 26-3. The call shall be in the following or like form: The . . . . . Presbyterian Church of . . . . ., being fully

satisfied with your ministerial qualifications, and confident that we have been led to you by the Holy Spirit as one whose ministry will be profitable to the spiritual interests of our church and fruitful for the Kingdom of our Lord, solemnly calls you, .....  
 ....., to undertake the work as Pastor of this congregation, promising you in the discharge of your duty all proper support, encouragement, and obedience in the Lord. That you may devote yourself wholly to the Ministry of the Word among us, we obligate ourselves to pay you the sum of \$..... a year in regular monthly payments, [insert here other terms, including such matters as manse, annual leave for study and rest, expense allowances, moving costs, medical insurance, etc.] and will pay the church's portion into the Ministers' Annuity Fund on that basis determined by the General Assembly, during the time of your being and continuing in the pastoral relationship set forth in this call to this church.

In testimony whereof we have respectively subscribed our names this ..... day of ....., A.D. .... Attest:

I, ....., having moderated the congregational meeting which extended a call to ..... for his ministerial services, do certify that the call has been made in all respects according to the rules laid down in The Book of Church Order, and that the persons who signed the foregoing call were authorized to do so by vote of the congregation.

.....  
 Moderator of the Congregational Meeting

When the call is to an Associate Pastor or an Assistant Pastor, the proper term shall be substituted for the term "Pastor." It shall also be appropriate to include a designation of the function to be exercised, such as: Minister of Education, Minister to Students, Minister of Visitation, Minister of Missions, Minister of Church Administration, etc. [See § 25-3.]

§ 26-4. Persons shall be appointed by the public vote of the congregation to sign the call. The Moderator of the meeting shall certify to the Presbytery that those signing the call were properly appointed, and that the call was in all other respects prepared as constitutionally required.

§ 26-5. One or more commissioners shall be elected by the con-

gregation to present the call to the Presbytery through its Commission on the Minister and His Work, and to prosecute the call before the Presbytery itself.

§ 26-6. A call shall be placed in the hands of a Minister or a Candidate only by that Presbytery to which he belongs, or under whose care he is in his preparation for the Gospel Ministry. When the call has been presented to the Presbytery, if the Presbytery finds it in order and deems it for the good of the Church that it be accepted by that person to whom it is addressed, it shall place the call in his hands that he may indicate whether he is ready to undertake the responsibilities stated in the call.

§ 26-7. When a church of one Presbytery extends a call to a Minister or a Candidate of another Presbytery, the commissioners appointed to prosecute the call shall so inform him. Upon receipt of such information he may request transfer to the Presbytery having jurisdiction of the church, there to be examined and received.

§ 26-8. When a court or agency of the Church shall call a Minister to labor in the Church at tasks edifying to the Church but not involving pastoral relationships, the court or agency shall lay before the Presbytery having jurisdiction of the Minister a call appropriate to the service involved.

§ 26-9. When a Minister desires to accept work which is not under the jurisdiction of any Church court, he shall request permission of his Presbytery. After the Presbytery has determined that the nature of the work is proper to the Ministry of the Gospel, and that the particular work serves the best interests of the Church and the Minister, it may grant permission. If the work is not deemed proper to the Ministry, and the Minister insists upon accepting it, he shall request to be divested of his office without censure.

The same procedures shall apply to a Candidate seeking ordination.

## CHAPTER 27

### *The Ordination and Installation of Ministers*

§ 27-1. Before a Candidate can be ordained to the office of Minister of the Word, he must have been called to a definite

pastoral relation or to some other definite work in the Church of which the Presbytery approves. The only exception is that stated in the following section.

§ 27-2. A Candidate who has completed his studies in preparation for ordination, and has opportunity for further studies, may request his Presbytery to ordain him. If the Presbytery is assured of his good conscience and his acceptability to God's people, approves the Candidate's intended course of study, and thinks it best for the Candidate and for the Church, the Presbytery may, after examination, appoint him to that study and proceed to his ordination.

§ 27-3. When a Candidate is called to work of which the Presbytery approves and indicates his willingness to accept, the Presbytery shall take immediate steps for his ordination.

§ 27-4. No Presbytery shall ordain any Candidate to the office of the Gospel Ministry to labor within the bounds of another Presbytery, but shall dismiss him as a Candidate to the Presbytery within whose bounds he expects to labor, that he may submit himself to its authority, according to the Constitution of the Church.

§ 27-5. The requirements for ordination shall be as follows:

(1) The Presbytery shall carefully examine the Candidate as to his knowledge of the various theological studies, including the original languages of the Holy Scriptures, and as to his knowledge of such other branches of learning as shall appear suitable to the Presbytery. Certificates from a standard four-year college and from a standard theological seminary, requiring not less than three years in residence, shall be required and may be accepted in lieu of these examinations with the exception of those in personal religious experience, Theology, Bible, the Sacraments, and in The Book of Church Order, including Government, Discipline, and Worship. In these required examinations the Candidate shall be examined as to his views as well as his knowledge.

(2) The Candidate shall prepare a thesis on some theological topic assigned by Presbytery.

(3) The Candidate shall prepare an exegesis on an assigned

portion of Scripture, requiring the use of the original language or languages.

(4) The Candidate shall preach a sermon before the Presbytery on some assigned passage or text.

The Presbytery shall not omit any of these requirements for ordination, except in the case of an extraordinary Candidate when only the formal educational requirements may be waived and an assignment in exegesis substituted which does not require knowledge of the original languages. Such cases shall require consent of three-fourths of the members of Presbytery present and shall be voted upon in a meeting subsequent to the one in which the motion is made. A full record of such action and the reason therefor shall be recorded in the minutes of Presbytery.

When the Presbytery is fully satisfied concerning the Candidate's qualifications for the sacred office, it shall appoint a time for his ordination, which ought, if practical, to be in that church of which he is to be the Pastor.

§ 27-6. On the day appointed for the ordination and installation of the Candidate, the Presbytery (or the Commission appointed by the Presbytery for the purpose) shall convene. The procedure shall be as follows:

A sermon suitable for the occasion shall be preached by a person appointed or invited by the Presbytery.

The member appointed to preside shall briefly state the proceedings of Presbytery preparatory to the ordination. He shall point out the nature and the importance of the ordinance and endeavor to impress the congregation with a proper sense of its solemnity.

The member presiding shall then propose to the Candidate the following questions:

(1) Do you believe the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice?

(2) Do you sincerely receive and adopt the Confession of Faith and the Catechisms of this Church, as containing the system of doctrine taught in the Holy Scriptures?

(3) Do you promise that if at any time you find yourself out of accord with any of the fundamentals of this system of doctrine you will on your own initiative make known to your



Presbytery the change which has taken place in your views since the assumption of this ordination vow?

(4) Do you approve the government and discipline of the Presbyterian Church in the United States?

(5) Do you promise subjection to your brethren in the Lord?

(6) Have you been induced, as far as you know your own heart, to seek the office of the holy Ministry from love to God and a sincere desire to promote his glory in the Gospel of his Son?

(7) Do you promise to be zealous and faithful in maintaining the truths of the Gospel and the purity and peace of the Church, whatever persecution or opposition may arise unto you on that account?

(8) Do you engage to be faithful and diligent in the exercise of all your duties as a Christian and a Minister of the Gospel, whether personal or relative, private or public; and to endeavor by the grace of God to adorn the profession of the Gospel in your manner of life, and to walk with exemplary piety before the flock of which God shall make you overseer?

(9) Are you now willing to take the charge of this church, agreeably to your declaration when accepting their call? And do you, relying upon God for strength, promise to discharge to it the duties of a Pastor?

When the Candidate has answered all these questions in the affirmative, the presiding member shall propose to the church the following questions:

(1) Do you, the people of this congregation, continue to profess your readiness to receive . . . . ., whom you have called to be your Pastor?

(2) Do you promise to receive the word of truth from his mouth with meekness and love, and to submit to him in the due exercise of discipline?

(3) Do you promise to encourage him in his labors, and to assist his endeavors for your instruction and spiritual edification?

(4) And do you engage to continue to him while he is your Pastor that material provision set forth in your call, and to furnish him with whatever you may see needful for the honor of religion?

When the people have answered these questions in the affirmative by holding up their right hands the Candidate shall kneel, and the Presbytery shall, with prayer and the laying on of hands,

according to the apostolic example, solemnly set him apart to the holy office of the Gospel Ministry.

After the prayer the Candidate shall rise and the member who presides shall first, and afterwards all the members of the Presbytery in their order, take him by the right hand, saying, in words to this effect: "We give you the right hand of fellowship to take part in this Ministry with us." The presiding member shall then say: "I now pronounce and declare that . . . . . has been ordained to the Ministry of the Word and Sacraments and has been regularly elected and installed Pastor of this congregation, agreeably to the Word of God, and according to the Constitution of the Presbyterian Church in the United States; and that as such he is entitled to all support, encouragement, honor, and obedience in the Lord: In the name of the Father, and of the Son, and of the Holy Spirit. Amen."

Persons appointed or invited by the Presbytery for the purpose shall give solemn charges to the Pastor and to the congregation to persevere in the discharge of their reciprocal duties.

After prayer and the singing of a psalm, or hymn, the congregation shall be dismissed with the benediction.

After the installation, the members of the congregation, or at least the Ruling Elders and Deacons, should come forward to their Pastor, and give him their right hand, in token of cordial reception and affectionate regard.

The Presbytery shall duly record the transaction.

§ 27-7. The installation of an ordained Minister shall follow a procedure similar to that outlined for ordination and installation, with necessary changes and omissions. The following questions shall be substituted for those addressed to a Candidate for ordination:

(1) Are you now willing to take charge of this congregation as their Pastor agreeably to your declaration in accepting its call?

(2) Do you conscientiously believe and declare, as far as you know your own heart, that, in taking upon you this charge, you are influenced by a sincere desire to promote the glory of God and the good of the Church?

(3) Do you solemnly promise that, by the assistance of the grace of God, you will endeavor faithfully to discharge all the duties of a Pastor to this congregation, and will be careful to

maintain a deportment in all respects becoming a Minister of the Gospel of Christ, agreeably to your ordination engagements?

§ 27-8. The congregation and the Minister to be installed should prepare themselves for the service by prayer, worship, study, and other appropriate spiritual disciplines.

§ 27-9. When a Minister is called as Pastor of two or more congregations, he must be installed in each congregation. This may be accomplished at a service held jointly by the congregations.

§ 27-10. In the ordination of Candidates who will do work other than that of a Pastor, the same questions are to be propounded as in the ordination of those who will be Pastors, with the exception of the ninth, for which the following shall be substituted:

"Do you now undertake the work to which you have been called and do you promise, in reliance upon God for strength, to be faithful in the discharge of all the duties incumbent upon you as a Minister of the Gospel of the Lord Jesus Christ?"

## CHAPTER 28

### *Dissolution of Pastoral Relationships*

§ 28-1. The pastoral relationship between a Pastor or Associate Pastor and a church may be dissolved only by Presbytery. The Minister shall request the Presbytery to dissolve the pastoral relationship. He must also state his intention to the Session which shall call a congregational meeting in precisely the same manner as when the call of a Pastor is to be extended. The congregation may or may not concur with the request of the Minister. If it does not concur, the Presbytery shall cite the church to appear by its commissioners; or the church may so appear on its own initiative, to show cause, if it has any, why the Presbytery should not dissolve the pastoral relation. If the church fails to appear, or if its reasons for retaining the relationship with the Minister be deemed insufficient, his request may be granted and the pastoral relationship dissolved.

The Presbytery may grant to the Commission on the Minister and His Work, in cases where Pastor and congregation have formally concurred, authority to dissolve the pastoral relationship and to inform the Stated Clerk who may then dismiss the Minister.

§ 28-2. If any church desires to be relieved of its Pastor, a similar procedure shall be observed. A congregation, after authorization by a duly called congregational meeting, may petition Presbytery to dissolve its relationship with its Pastor. The Pastor may or may not concur with the request of the congregation. The Presbytery shall cite the Pastor to appear; or he may appear on his own initiative, to show cause, if he has any, why Presbytery should not dissolve the relationship. If the Pastor fails to appear, or if his reasons for maintaining the relationship be deemed insufficient, the relationship may be dissolved.

§ 28-3. When a Minister reaches the age of seventy years the pastoral relationship between him and the church or churches he is serving shall automatically terminate. The Minister shall notify the Presbytery through its Commission on the Minister and His Work six months before the date of his seventieth birthday.

A Minister serving as Pastor, Associate Pastor, Assistant Pastor, or Stated Supply at the date of his seventieth birthday is eligible for re-election in the same relationship for a term of one year at a time, not to exceed five terms. In the re-election of Pastors and Associate Pastors a congregational meeting shall be called for that purpose by the Session, after it has consulted with the Commission on the Minister and His Work. No installation is necessary when a Minister is thus re-elected by the same church or churches.

A Minister may be called to serve as Assistant Pastor, Stated Supply, Interim Supply or Occasional Supply by a church or churches other than that in which he was serving when he reached the age of seventy, but not as Pastor or Associate Pastor.

§ 28-4. This provision for automatic termination of relationship at the age of seventy shall not be compulsory unless the church or churches have entered the Ministers' Annuity Fund, or have arranged for a retirement pension equal to the minimum provided by the Ministers' Annuity Fund.

§ 28-5. This provision for automatic termination of relationship at the age of seventy shall apply also to all Ministers serving the Church, its agencies or its courts in any capacity.

## CHAPTER 29

*Election, Ordination and Installation of  
Ruling Elders and Deacons*

§ 29-1. Every church shall elect persons to the offices of Ruling Elder and Deacon in the following manner:

- (1) The Session shall order a congregational meeting to convene at the regular place of worship when it seems desirable for the church to have additional Ruling Elders or Deacons. If one-fourth of the persons entitled to vote shall at any time request the Session to call a congregational meeting for the purpose of electing additional officers, it shall be the duty of the Session without delay to call such a meeting.
- (2) Public notice shall be given of the time, place, and purpose of this meeting at least one week prior to the appointed time.
- (3) The congregation shall meet according to requirements of the Form of Government.
- (4) The voters being convened, the Moderator shall explain the purpose of the meeting and then put the question: "Are you now ready to proceed to the election of additional Ruling Elders (or Deacons)?" If they declare themselves ready, the election may proceed by nomination, or by private ballot without nomination, as the congregation may prefer. Any procedure for nominations must allow for nominations from the floor by any member present.
- (5) The number of officers to be elected shall be determined by the congregation before the ballot.
- (6) In every case a majority of all the votes cast shall be required to elect. [See § 5-1 ff.]

§ 29-2. When any person has been elected to the office of Ruling Elder, or Deacon, the Session shall confer with him as to his willingness to undertake the office. After a period of instruction the Session shall examine him as to his religious experience, his knowledge and acceptance of the system of doctrine, government, and discipline contained in the Constitution of the Church, and the duties of the office to which he has been elected. When the examination is approved, the Session shall appoint a day for his ordination and installation.

§ 29-3. The procedure of the ordination and installation of Elders and Deacons shall be as follows:

The Session shall be officially convened in the presence of the congregation. A sermon shall be preached if convenient.

The presiding Minister shall state in a concise manner the warrant and nature of the office of Ruling Elder, or Deacon, together with the character proper to be sustained and the duties to be fulfilled.

The presiding Minister shall propose to the candidate the following questions which shall be answered in the affirmative:

- (1) Do you believe the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice?
- (2) Do you sincerely receive and adopt the Confession of Faith and the Catechisms of this Church, as containing the system of doctrine taught in the Holy Scriptures?
- (3) Do you promise that if at any time you find yourself out of accord with any of the fundamentals of this system of doctrine, you will on your own initiative make known to your Session the change which has taken place in your views since the assumption of this ordination vow?
- (4) Do you approve the government and discipline of the Presbyterian Church in the United States?
- (5) Do you accept the office of Ruling Elder (or Deacon) in this church, and promise faithfully to perform all the duties thereof, and to endeavor by the grace of God to adorn the profession of the Gospel in your life, and to set a worthy example before the Church of which God has made you an officer?
- (6) Do you promise subjection to your brethren in the Lord?
- (7) Do you promise to study the peace, unity, edification and purity of the Church?

The Minister shall address to the members of the church the following question which shall be answered in the affirmative by holding up the right hand:

Do you, the members of this church, acknowledge and receive this brother as a Ruling Elder (or Deacon), and do you promise to yield him all that honor, encouragement, and obedience in the Lord to which his office, according to the Word of God and the Constitution of this Church, entitles him?

The officer shall kneel and the Church Session shall proceed to



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set him apart, with prayer and the laying on of hands, to the office of Ruling Elder (or Deacon).

Prayer being ended, the members of the Session (and the Deacons, if the case be that of a Deacon) shall take the newly ordained officer by the hand, saying, in words to this effect: "We give you the right hand of fellowship, to take part in this office with us."

The Minister shall then say: "I now pronounce and declare that . . . . . has been regularly elected, ordained, and installed a Ruling Elder (or Deacon) in this church, agreeably to the Word of God, and according to the Constitution of the Presbyterian Church in the United States; and that as such he is entitled to all encouragement, honor and obedience in the Lord: In the name of the Father, and of the Son, and of the Holy Spirit. Amen."

After this the Minister shall give to the Ruling Elder (or Deacon) and to the church an exhortation suited to the occasion.

§ 29-4. The offices of Ruling Elder and Deacon cannot be laid aside at the officer's pleasure. Neither can the ordination of any man be removed except by regular process.

§ 29-5. An Elder or Deacon remains ordained to his office in the Church unless divested thereof by the proper action of a Church court, and is obligated to continue his performance of those duties of the office which are to be exercised severally.

Yet a Ruling Elder or Deacon may have reasons which he deems valid for being released from the active duties of his office. In such a case the Session, after conference with him and careful consideration of the matter, may, if it thinks proper, dissolve the active officer relationship which exists between him and that church.

When an officer's term of service expires, or when he is made Elder or Deacon Emeritus, or when he moves his membership to another church, he ceases to function jointly with the other officers in the Session or Board of Deacons.

§ 29-6. Any Ruling Elder (or Deacon) who has served faithfully but whose ability to continue to render active service is limited by age, physical disability or other cause, may be elected Ruling Elder (or Deacon) Emeritus by the congregation at a regularly called meeting, provided such Ruling Elder (or Deacon) is will-

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ing and indicates in advance his recognition of this act as an honor. A Ruling Elder Emeritus is not eligible to represent that church in the higher courts.

§ 29-7. A Deacon may be elected to be a Ruling Elder or an Elder may be elected to be a Deacon, but no Church officer may engage in active service in two offices at the same time. Ordination to the second office does not invalidate the previous ordination.

§ 29-8. A Ruling Elder, or Deacon, though chargeable with no specific offense, may become unacceptable in an active capacity to a majority of the church which he serves. In such a case the church may take the initiative by a majority vote at a regularly called congregational meeting, and request the Session to dissolve the active relationship between the church and the officer without censure. The Session, after conference with the Ruling Elder, or Deacon, may, after careful consideration, use its discretion as to dissolving the active relationship. In either case the Session shall report its action to the congregation and to the officer. [See R.D. § 107-8.]

§ 29-9. The active relationship between a Ruling Elder, or Deacon, and his church may also be dissolved by the Presbytery when it finds, following a hearing which provides procedural safeguards as in cases of process, that the action is necessary for the welfare of the Church. [See § 16-7(5); 19-3.]

§ 29-10. When a Ruling Elder, or Deacon, because of a change of residence or disability is unable to perform the duties of his office for a period of one year, his active relationship shall be dissolved by the Session unless there is good reason, which must be recorded.

§ 29-11. Instead of electing Ruling Elders and Deacons for an indefinite period of active service, a particular church, by a majority vote at a congregational meeting, may adopt a plan for the election of either Ruling Elders or Deacons, or both, for limited terms of active service. In such cases the terms of active service shall be not less than three years, except to initiate the system or to fill unexpired terms, and the Session and the Board of Deacons shall consist of not less than three classes elected at

regular intervals. When a congregation limits terms of service it shall designate the period, if any, during which officers shall be ineligible for re-election to active service.

An Elder whose term of service has expired in a church is eligible to represent that church in the higher courts.

§ 29-12. The installation of an Elder or Deacon previously ordained shall follow a procedure similar to that set forth for ordination and installation except that the first four questions proposed to a candidate for ordination shall be omitted, as well as the laying on of hands by the Session.

## AMENDMENT AND UNION

### CHAPTER 30

#### *Amending the Constitution and Effecting Church Unions*

§ 30-1. Amendments to The Book of Church Order may be made only in the following manner:

- (1) The approval of the proposed amendment by the General Assembly and its recommendation to the Presbyteries.
- (2) The advice and consent of a majority of the Presbyteries.
- (3) The approval and enactment by a subsequent meeting of the General Assembly.

§ 30-2. Amendments to the Confession of Faith and Catechisms of this Church may be made only in the following manner:

- (1) The approval of the proposed amendment by the General Assembly and its recommendation to the Presbyteries.
- (2) The advice and consent of three-fourths of the Presbyteries.
- (3) The approval and enactment by a subsequent meeting of the General Assembly.

These provisions can be amended only by the same method as they prescribe for the amendment of the Confession of Faith and the Catechisms of this Church.

§ 30-3. Full organic union and consolidation of the Presbyterian Church in the United States with any other ecclesiastical body can be effected only in the following manner:

- (1) The approval of the proposed union by the General Assembly and its recommendation to the Presbyteries.

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- (2) The advice and consent of three-fourths of the Presbyteries.
- (3) The approval and consummation by a subsequent meeting of the General Assembly.

These provisions can be amended only by the same method which is prescribed for the amendment of the Confession of Faith and the Catechisms of the Church. [See § 18-6(13) and (17).]

§ 30-4. If by reason of the failure of a number of the Presbyteries to act, or to report action, on any proposed amendment to the Constitution, the response of the Presbyteries is not satisfactory to the succeeding meeting of the General Assembly, it may defer action for one year. In that event the General Assembly shall urge the delinquent Presbyteries to report their judgment to the next meeting of the Assembly, which shall take final action on the proposed amendment.

§ 30-5. No vote shall be taken by a Presbytery on any issue sent to such Presbytery by the General Assembly for advice and consent under this chapter unless at least ten days' notice has been given in writing to each Teaching Elder enrolled in the Presbytery and to the Clerk of Session of each church in the Presbytery. Such notice should state the issue to be presented for advice and consent and the time and place of such Presbytery meeting.

### CHAPTER 31

#### *Of Union Churches*

§ 31-1. Particular churches of this Church may unite to form union churches with one or more particular churches of the United Presbyterian Church in the United States of America, of the Reformed Church in America, and of other Reformed bodies, with the approval of the Presbytery.

§ 31-2. The following Plan of Union shall be adopted by the union church so formed:

- (1) The following Plan of Union is adopted by the ..... Presbyterian Church of ..... and the ..... Church of ....., effective as of the date when each

of the congregations has approved the plan by a two-thirds majority of those present at a regularly called congregational meeting with such notice and quorum as is required by the Constitution of each Church, and when the Presbytery (Classis) of jurisdiction of each church has approved the particular union and this Plan of Union.

(2) The purpose of this union is to provide for the worship of Almighty God and instruction in the Christian religion by a united congregation which will share the property, real and personal, of the uniting churches and provide for the services of a Minister or Ministers for the united church.

(3) The united church shall be known as the ..... Church of .....

(4) The united church shall be subject to the Constitution of each Church involved as set forth in subsections (18), (19), (21), and (22) below.

(5) The Session (Consistory) shall submit its records annually, and whenever requested, to each judicatory of jurisdiction.

(6) The membership of the united church shall consist of those who were members of the uniting churches, plus those received by the Session (Consistory) of the united church.

(7) The Session (Consistory) of the united church shall report an equal share of the total membership to each judicatory of jurisdiction, and such membership shall be published in the Minutes (Acts and Proceedings) of the General Assembly, with a note to the effect that the report is that of a union church, and with an indication of the total actual membership. A similar report of church school members, baptisms, etc., and financial expenditures shall be made by the Session (Consistory) and noted by each General Assembly in its minutes.

(8) Initially the officers of the united church, Elders and Deacons, shall be those officers in active service of the uniting churches, who will undertake to perform their ordination responsibilities under the Constitution of each Church, as indicated in subsections (4) above and (18), (19), (21), and (22) below.

(9) At the first annual meeting subsequent to the effective date

of the union, new classes of officers, to replace the officers noted in section (8) above, shall be elected by the united congregation according to the constitutional procedure in force as a consequence of subsection (22) below.

(10) The pastoral relations of the Ministers of the uniting churches shall be dissolved automatically by the action of the Presbytery (Classis) of jurisdiction in approving this plan, but they may be eligible to be Ministers (Pastors or Associate Pastors) of the united church according to the will of the united congregation and subject to the approval of the Presbyteries (both the Classis and the Presbytery).

(11) The Minister or Ministers of the united church shall be full and responsible members of each judicatory of immediate jurisdiction and shall be subject to discipline as provided in subsection (19) below.

(12) The united church shall cause a corporation to be formed under the appropriate laws of the state, where permissible. That corporation shall include in its articles or charter the substance of subsections (2), (3), and (4) above.

(13) All property of the uniting churches, real and personal, shall be transferred to the corporation formed in subsection (12) above. The new corporation shall be the legal successor of the corporations, if any, of the uniting churches, and it shall be bound to administer any trust property or monies received in accordance with the provisions of the original establishment of the trust. All liabilities of the uniting churches shall be liabilities of the united church. In any state where a church corporation is forbidden, the purposes of this paragraph shall be achieved in harmony with the law of that state.

(14) Trustees of the corporation (or the unincorporated body) shall be elected in harmony with civil law according to the constitutional provisions outlined in subsection (4) above, as interpreted by subsection (22) below.

(15) While recognizing the basic right of any giver to designate the cause or causes to which his own gift shall go, the Session (Consistory) of the united church shall annually propose to the congregation a general mission or benevolence program



which shall be divided equitably among the officially approved causes of each denomination. The proportions shall be as the Session (Consistory) shall decide in response to the requests of the higher judicatories.

(16) Per capita apportionments or assessments shall be paid to each Presbytery (Classis) of jurisdiction on the basis of the total communicant membership of the union church, equally divided among the denominations involved.

(17) All members of the united church shall be under the discipline of the Session (Consistory) according to rules agreed upon in harmony with the Constitution of each denomination where they coincide, and in harmony with the mandatory provisions of the Constitution of one denomination where the others are permissive, and at the choice of the Session (Consistory) where they may be contradictory.

(18) Appeals or complaints against the actions of the Session (Consistory) shall be made to one judicatory only (Presbytery or Classis) at the choice of the members and all subsequent appeals or complaints shall be in the courts of the members' original choice, and decisions so finally made shall be binding on the Session (Consistory) and on the member.

(19) The Minister or Ministers shall be subject to the discipline of the Presbyteries (the Presbytery and the Classis) provided that when either shall begin an action, it shall invite a committee from the others to join the commissioner, prosecutor, or prosecuting committee in formulating and pressing the charges. In the event of appeal the case shall be finally decided by the highest court to which the appeal is taken in the Church which commenced the action, and that decision shall be equally binding on the Presbyteries (both the Presbytery and the Classis).

(20) The Minister or Ministers shall participate in the denominational Pension Plan of one of the Churches. If he is already participating in one plan, he shall remain in that plan. If he is not a member of any, he shall choose among them.

(21) Complaints against the administrative acts of the Session (Consistory) may be taken under the constitutional provisions

of only one denomination, according to the choice of the complainant, and once being complained to one judicatory, no other denomination shall accept jurisdiction in the same matter.

(22) Wherever the Constitutions of the denominations differ, the mandatory provisions of one shall apply in all cases when the others are permissive. Wherever there are conflicting mandatory provisions (except as provided in subsection (17) above), the Session (Consistory) of the united church shall petition the judicatories of immediate jurisdiction to overture their respective highest courts to resolve the conflict either by authoritative interpretation or by constitutional amendment.

(23) A union church may be dissolved by a two-thirds vote of two congregational meetings, held not less than one year and not more than two years apart, subject to the concurrence of the Presbyteries (Classes) involved. In case of dissolution of a union church, all property of the united church, real and personal, shall be divided equally between the Presbyteries (the Presbytery and the Classis) of jurisdiction.

§ 31-3. No provision in this chapter shall be construed as modifying or amending the Constitution of this Church in its application to any but union churches organized under this chapter, their members, officers, or Ministers.

## CHAPTER 32

### *Of Union Presbyteries (Classes)*

§ 32-1. A Presbytery of this Church may unite with a Presbytery or Classis of the United Presbyterian Church in the United States of America, the Reformed Church in America, or another Reformed body, to form a union Presbytery (Classis), with the approval of the Synod of jurisdiction of which the Presbytery (Classis) is a part. A union Presbytery (Classis) may be composed of two or more Presbyteries (Classes) from two or more Reformed bodies.

§ 32-2. The following Plan of Union shall be adopted to each Presbytery (Classis) involved:

(1) This Plan of Union is adopted by the Presbytery of ..... and the Presbytery (Classis) of ..... effective as of ..... (date), the Presbyteries (Presbytery and Classis) having each approved the plan by a two-thirds majority of those present at a stated meeting of the Presbytery (Classis), the matter having been published beforehand on its docket and the union and this plan having been approved by the Synod of jurisdiction over each Presbytery.

(2) The purpose of the union shall be the furtherance of a united witness and mission, the administration of a single program of nurture, sustenance, and growth of the Church within the union Presbytery (Classis), and the oversight of all churches within its bounds by a union Presbytery (Classis), which will hold title to the properties of the uniting judicatories and provide the functions and fulfill the duties of a Presbytery (Classis), as specified in the Constitution of each Church.

(3) The union Presbytery (Classis) shall be subject to the Constitution of each denomination as set forth below:

(a) The Presbytery (Classis) shall submit its records annually, and whenever requested, to each Synod of jurisdiction.

(b) The Presbytery (Classis) shall be fully and equally responsible to each Church. The Presbytery (Classis) shall adjust its benevolence or general mission askings of the particular churches annually, to the end that the Presbytery (Classis) shall equitably support the program of each denomination.

(c) Per capita apportionments or assessments shall be paid to each Synod and General Assembly of jurisdiction on the basis of the communicant strength of the union Presbytery (Classis), equally divided among the denominations involved.

In the event that such a procedure proves inequitable, an alternative basis may be adopted, subject to approval by the Synod of jurisdiction of each denomination. Such an alternative, if adopted, shall be subject to periodic review.

(d) The union Presbytery (Classis) shall be under the discipline of the Synods and General Assemblies, according to standing rules agreed upon in harmony with the Constitutions

of the denominations where they coincide, and in harmony with the mandatory provisions of the laws of each Church where the others are permissive, and at the choice of the Presbytery (Classis) where they may be contradictory.

(e) Appeals or complaints against the actions of the Presbytery (Classis) shall be made only to the Synod of one denomination. That denomination shall be determined by the Presbytery (Classis), and all subsequent appeals or complaints in the same action shall be in the courts of the original determination, and decisions so reached shall be binding on all the parties to such action.

(f) Complaints against administrative acts of the Presbytery (Classis) may be taken under the constitutional provisions of only one denomination, according to the determination of the Presbytery (Classis); and, once being complained to one court, courts of the other denominations may not accept jurisdiction in the same matter.

(g) Wherever the Constitutions of the denominations differ, any mandatory provisions of one shall apply in all cases where the others are permissive. Where there are conflicting mandatory provisions (except as provided in subsection (3) (d) above), the union Presbytery (Classis) shall overture the General Assemblies of the denominations involved to resolve the conflict either by authoritative interpretation or by constitutional amendment.

(4) The membership of the union Presbytery (Classis) shall consist of all minister members of each uniting Presbytery (Presbytery and Classis), and all the churches (elder representatives thereof) of the uniting Presbyteries (Presbytery and Classis), plus all others received by the union Presbytery (Classis), subsequent to the effective date of this union. When the Constitutions of the Churches vary as to elder representation, that provision which confers the largest representation shall apply.

(5) The churches of a union Presbytery (Classis) shall be considered union churches belonging to each denomination. Each particular church shall be reported to each General Assembly and Synod of jurisdiction on the basis of an equal division of its

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total membership, with a notation to the effect that this has been done.

(6) Ministers of the union Presbytery (Classis) shall be full and responsible members of each denomination. They shall be subject to the jurisdiction and discipline of the denominations as provided in this plan. Ministers and Elders shall be eligible to serve as Commissioners (delegates) to any General Assembly, as provided in the Constitutions of each denomination. Commissioners (delegates) to General Assembly shall be elected on the basis of an equal division of the total communicant membership of the Presbytery (Classis).

(7) The union Presbytery (Classis) shall be responsible to propose to all its churches a general mission and benevolence program which it judges to be an adequate and equitable response to the requests of the Assemblies, the Synods, and to its own needs. Each Session (Consistory) shall give the members of its congregation opportunity to support this general mission and benevolence program.

(8) The union Presbytery (Classis) shall cause a corporation to be formed under the appropriate laws of the state. This corporation shall include in its articles or charter the substance of subsections (1), (2), and (3) above. All property of the uniting Presbyteries (Presbytery and Classis), real and personal, shall be transferred to the corporation or corporations formed under this section. The new corporation shall be the legal successor of the corporations, if any, of the uniting Presbyteries (Presbytery and Classis), and it shall be bound to administer any trust property or monies received in accordance with the provisions of the original establishment of the trust. All liabilities of each uniting Presbytery (Classis) shall be liabilities of the union Presbytery (Classis). In any state where a church corporation is forbidden, the purpose of this paragraph shall be achieved in harmony with the laws of that state.

(9) The union Presbytery (Classis) shall draw up standing rules which shall define the operation of Presbytery (Classis) in such a manner as to fulfill all the functions of a Presbytery

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(Classis), as defined in the Constitution of each denomination.

(10) Each Minister who may be subject to the call of Presbytery (Classis) or any of its constituent churches in the exercise of his vocation, or who may be an employee of Presbytery (Classis), shall participate in the denominational pension plan of one of the Churches. If the Minister is already participating in one plan, he shall remain in that plan. If he is not a member of any, he shall choose among them.

(11) A union Presbytery (Classis) may be dissolved by a two-thirds vote at two stated meetings of Presbytery (Classis), not less than one year and not more than two years apart, subject to the concurrence of the Synods involved.

(a) In case of dissolution of a union Presbytery (Classis), all the property, real and personal, of the union Presbytery (Classis) shall be divided between the denominations or their courts of jurisdiction on the basis of the origin of the property, if such is determinable. If the origin is not determinable, then the property shall be divided equally between the denominations or their courts of jurisdiction, as may be proper.

(b) The particular churches within the dissolved union Presbytery (Classis) shall retain their status as union churches, unless they vote to change their status under the provisions of § 31-2(23).

§ 32-3. No provision in this Plan of Union shall be construed as modifying or amending the Constitution of this Church in its application to any but union Presbyteries (Classes) organized under this chapter, their churches, or Ministers.



## THE RULES OF DISCIPLINE



## THE RULES OF DISCIPLINE\*



## PART I

## Doctrine of Church Discipline

## CHAPTER I

*The Nature and Purposes of Church Discipline*

§ 101-1. Church discipline is the Church's exercise of authority given by Christ, both in the direction of guidance, control and nurture of its members, and in the direction of constructive criticism of offenses. Thus, the aims of discipline are that God may be honored, that the purity and welfare of the Church may be maintained, and that those under the Church's discipline may be brought to repentance and restoration.

§ 101-2. Discipline for correction is not to be exercised by individuals but is committed to Presbyters to be exercised in Church courts.

§ 101-3. To these ends every court should show its constant concern that the conduct of members, officers, churches and courts under its care be in accordance with the laws of Christ. Where it is necessary a court should take action to apply Church censures according to the procedures in this book.

§ 101-4. Discipline over the children of communing members is exercised by the Session, and is limited to advice and counsel, which may take the form of warning and reproof.

§ 101-5. The power which Christ has given the Church is for building up, and not for destruction. Discipline is to be exercised

\* Approved and enacted by the General Assembly April 29, 1961.

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as under a dispensation of mercy and not of wrath. The Church is to act as a mother who corrects her children for their good, that every one of them may be presented faultless in the day of Christ.

§ 101-6. The remainder of the Rules of Discipline are concerned only with the corrective aspect of Church discipline and the modes in which it is to be administered.

## PART II

## Substantive Rules of Discipline

## CHAPTER 2

*Offenses*

§ 102-1. An offense, the proper object of judicial process, is anything in the principles or practice of a church member professing faith in Christ which is contrary to the Word of God, as understood through Holy Scripture and interpreted in the Constitution of the Presbyterian Church in the United States. The Confession of Faith and the Larger and Shorter Catechisms, together with the formularies of Government, Discipline, and Worship, are accepted by the Presbyterian Church in the United States as standard expositions of the teachings of Scripture in relation to both faith and practice.

§ 102-2. Offenses are either personal or general, private or public; but all offenses, being sins against God, are grounds of discipline.

§ 102-3. Personal offenses are violations of the divine law, considered in the special relation of wrongs or injuries to particular individuals. General offenses are heresies or immoralities having no such relation, or considered apart from it.

§ 102-4. Private offenses are those which are known only to a few persons. Public offenses are those which are notorious.

## CHAPTER 3

*Church Censures*

§ 103-1. The censures which may be inflicted by Church courts are Admonition, Suspension, Excommunication, and Deposition. When a lower censure fails to reclaim the offender, it may become

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the duty of the court to proceed to the infliction of a higher censure.

§ 103-2. **ADMONITION** is the formal reproof of an offender by a Church court, warning him of his guilt and danger, and exhorting him to be more circumspect and watchful in the future.

§ 103-3. **SUSPENSION**, with respect to church members, is their temporary exclusion from the Sacraments. With respect to Church officers, it is their temporary exclusion from the exercise of their office, to which temporary exclusion from the Sacraments may be added. It may be either definite or indefinite as to its duration. Definite Suspension is administered when the credit of religion, the honor of Christ, and the good of the offender demand it, even though he may have given satisfaction to the court. Indefinite Suspension is the exclusion of an offender from the Sacraments, or from his office, until he exhibits signs of repentance, or until, by his conduct, the necessity of the highest censure is made manifest.

§ 103-4. **EXCOMMUNICATION** is the excision of an offender from the communion of the Church. This censure is to be inflicted only on account of gross crime or heresy, when the offender shows himself incorrigible and contumacious. The design of this censure is to operate on the offender as a means of reclaiming him, to deliver the Church from the scandal of his offense, and to inspire all with fear by the example of his discipline.

§ 103-5. **DEPOSITION** is the degradation of an officer from his office, and may or may not be accompanied with the infliction of other censure.

## Procedural Rules of Discipline in Trials (Cases of Process)

### CHAPTER 4

#### *Jurisdiction and Parties*

§ 104-1. Original jurisdiction over church members, Ruling Elders and Deacons is in the Church Session of the church to which such members belong. Original jurisdiction over Ministers is in the Presbytery to which the Minister belongs. In cases where the court having original jurisdiction is unable to exercise jurisdiction, process may be begun before the next higher court.

§ 104-2. It is the duty of all Sessions and Presbyteries to exercise care over those subject to their authority; and they shall, with due diligence and great discretion, demand from such persons satisfactory explanations concerning reports affecting their Christian faith or conduct. This duty is more imperative when those who deem themselves aggrieved by injurious reports ask for an investigation. If such investigation, however originating, results in raising a strong presumption of the guilt of the party involved, the court shall institute process, and shall appoint a prosecutor to prepare the indictment and to conduct the case. This prosecutor shall be appointed from the membership of the court, except that, in a case before the Session, he may be any communing member of the same congregation with the accused.

§ 104-3. The original and only parties in a case of process are the accuser and the accused. The accuser is always the Presbyterian Church in the United States, whose honor and purity are to be maintained. The prosecutor is always the representative of the Church, whether he voluntarily brings the charge and is permitted by the court to prosecute it or whether he is a member of the court appointed by the court to act as prosecutor. In appellate courts the parties are known as appellant and appellee.



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§ 104-4. In every case the Church is the injured and accusing party, against the accused. Every indictment shall therefore begin: "In the name of the Presbyterian Church in the United States," and shall conclude, "against the peace, unity, and purity of the Church, and the honor and majesty of the Lord Jesus Christ as the King and Head thereof."

§ 104-5. An injured party shall not become a prosecutor of personal offenses without having tried the means required by Christ for reconciliation and reclaiming an offender: "Moreover if thy brother shall trespass against thee, go and tell him his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother. But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established." (Matthew 18:15-16.) A Church court, however, may judicially investigate personal offenses as if general, when the interests of religion seem to demand it. So, also, those to whom private offenses are known cannot become prosecutors without having previously endeavored to remove the scandal by private means.

§ 104-6. When the offense is general, the case may be conducted either by any person appearing as prosecutor, or by a prosecutor appointed by the court.

§ 104-7. When the prosecution is instituted by the court, the previous steps required by our Lord in the case of personal offenses are not required. There are many cases, however, in which it will promote the interests of religion to send a committee to converse in a private manner with the accused, and endeavor to bring him to a sense of his guilt, before instituting actual process.

§ 104-8. Great caution should be exercised in receiving accusations from any person who is known to have ill will toward the accused; who is not of good character; who is himself under censure or process; who is deeply interested in any respect in the conviction of the accused; or who is known to be litigious, rash, or highly imprudent.

§ 104-9. Every voluntary prosecutor shall be previously warned that if he fails to show reasonable grounds for the charges he

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must himself be censured as a slanderer of the brethren in proportion to the malice or rashness manifested in the prosecution.

§ 104-10. When it is impracticable immediately to commence process against an accused church member, the Session may, if it thinks the edification of the Church requires it, forbid the accused to approach the Lord's Table until the charges against him can be examined.

§ 104-11. After a member of a Church court has been cited for process, all his official functions may be suspended pending the trial at the discretion of the court; but this shall not be done as a censure.

§ 104-12. In any trial neither the accused nor the prosecutor shall perform any function of a voting member of the court.

## CHAPTER 5

*Procedure*

§ 105-1. It is incumbent on every member of a court of Jesus Christ engaged in a trial of offenders, to bear in mind the Biblical injunction: "If a man be overtaken in a fault, ye which are spiritual, restore such an one in the spirit of meekness; considering thyself, lest thou also be tempted." (Galatians 6:1)

§ 105-2. Process against an accused shall not be commenced unless some person or persons undertake to make out the charge; or unless the court finds it necessary, for the honor of religion, itself to take the step provided for in section 104-2.

§ 105-3. When a charge is laid before the Session or Presbytery, it shall be reduced to writing, and, except by consent of parties, the only actions to be taken at the first meeting of the court shall be (1) to appoint a prosecutor, (2) to order the indictment to be drawn and served on the accused, together with a list of witnesses then known to support it, and (3) to cite all parties and their witnesses to appear and be heard at another meeting, which shall not be sooner than ten days after such citation. At this second meeting of the court the charges shall be read to the accused, if

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present, and he shall be called upon to say whether he is guilty or not. If he confesses, the court may deal with him according to its discretion; if he pleads and takes issue, the trial shall proceed. An accused party may request the court for a change in the time of meeting if he is unable to be present and desires to attend personally, or for additional time to prepare his defense if it is necessary. He may plead in writing when he cannot be personally present, and if he is necessarily absent he should have counsel assigned to him.

§ 105-4. The citation shall be issued and signed by the Moderator or Clerk, by the order and in the name of the court. Citations shall be issued in similar fashion to such witnesses as either party may nominate to appear on his behalf.

§ 105-5. In drawing the indictment, the times, places, and circumstances should, if possible, be particularly stated, that the accused may have an opportunity to make his defense. In the discretion of the court the accused may request and obtain a more particularized statement of the charge against him.

§ 105-6. When an accused person refuses to obey a citation, he shall be cited a second time; and this second citation shall be accompanied with a notice that if he does not appear at the time appointed (unless providentially hindered, which fact he must make known to the court), or that if he appears and refuses to plead, he shall be dealt with for his contumacy. If he still refuses to appear or to plead, the court shall enter upon its records the fact, together with the nature of the offense charged, and he shall be suspended from sealing ordinances for his contumacy. The censure may be made public if this is deemed expedient by the court, and it shall not be removed until the offender has not only repented of his contumacy, but has given satisfaction in relation to the charges against him.

§ 105-7. When the censure of Suspension is imposed upon an accused person for his contumacy in refusing to appear or plead, the court will ordinarily proceed no further with the trial. It may, however, if it determines that the circumstances require it, proceed to trial on the merits, despite the wilful absence of the accused person, and impose whatever censure it finds warranted. In

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this event counsel should be appointed to represent the interests of the accused person during the trial.

§ 105-8. The time which must elapse between the serving of the first citation on the accused person, and the meeting of the court at which he is to appear, shall be at least ten days. But the time allotted for his appearance on the subsequent citation shall be left to the discretion of the court, provided that it is not less than is quite sufficient for a seasonable and convenient compliance with the citation.

§ 105-9. When the offense with which an accused person stands charged took place at a distance, and it is inconvenient for the witnesses to appear before the court having jurisdiction, that court may either appoint a commission of its body, or request the proper co-ordinate court to take the testimony for it. The accused shall always have reasonable notice of the time and place of the meeting of this commission or co-ordinate court.

§ 105-10. When an offense, alleged to have been committed at a distance, is not likely otherwise to become known to the court having jurisdiction, it is the duty of the court within whose bounds the offense occurred, after satisfying itself that there is reasonable ground of accusation, to send notice to the court having jurisdiction, which shall at once proceed against the accused; or the whole case may be remitted for trial to the co-ordinate court within whose bounds the offense is alleged to have been committed.

§ 105-11. Before proceeding to trial, courts should ascertain that their citations have been duly served.

§ 105-12. In every process, if the court deems expedient, it may appoint a Judicial Committee, with the duty of digesting and arranging all the papers, and of prescribing under the direction of the court the whole order of the proceedings. The members of this committee shall be entitled, notwithstanding their performance of this duty, to sit and vote in the case as members of the court.

§ 105-13. When the trial is about to begin, it is the duty of the Moderator solemnly to announce from the chair that the court is about to pass to the consideration of the case, and to enjoin on



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the members to recollect and regard their high character as judges of a court of Jesus Christ, and the solemn duty in which they are about to engage.

§ 105-14. In order that the trial may be fair and impartial, the witnesses shall be examined in the presence of the accused, or at least after he has received due citation to attend. Witnesses may be cross-examined by both parties, and any questions asked which are pertinent to the issue.

§ 105-15. On all issues arising in the progress of a trial, the parties may present their arguments; and when they have been heard, they may be required to withdraw from the court until the members deliberate upon and decide the point.

§ 105-16. When a court of first resort proceeds to the trial of a case, the following order shall be observed: (1) The Moderator shall charge the court. (2) The indictment shall be read, and the answer of the accused heard. (3) The witnesses for the prosecutor and then those for the accused shall be examined, with either party being entitled to call rebuttal witnesses. (4) The parties shall be heard: first, the prosecutor, and then the accused, and the prosecutor shall close. (5) The prosecutor and accused shall withdraw, the roll shall be called, and the members may express their opinion in the case. (6) The vote shall be taken, the parties recalled, the verdict announced, and judgment entered on the records.

§ 105-17. Either party may, for cause, challenge the right of any member to sit in the trial of the case. The questions of disqualification shall be decided by the members of the court other than the one challenged.

§ 105-18. Before or during the trial of a case, any member of the court who expresses his opinion of its merits to either party, or to any person not a member of the court; or who absents himself from any sitting without the permission of the court or satisfactory reasons rendered, shall be thereby disqualified from taking part in the subsequent proceedings.

§ 105-19. The parties shall be allowed copies of the whole proceedings at their own expense, if they demand them. Minutes of the trial shall be kept by the Clerk, which shall exhibit the

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charges, the answer, all the testimony, and all such acts, orders, and decisions of the court relating to the case, as either party may desire, and also the judgment. The Clerk shall, without delay, attach together the charges, the answer, the citations and returns thereto, and the minutes herein required to be kept. These papers constitute the Record of the Case. [See § 116-5.]

When a case is removed by appeal or complaint, the lower court shall transmit the Record thus prepared to the higher court with the addition of the notice of appeal or complaint, and the reasons thereof. Nothing which is not contained in this Record shall be taken into consideration in the higher court without consent of the parties in the case. On the final decision of a case in a higher court, its judgment shall be sent down to the court in which the case originated.

§ 105-20. No professional counsel shall be permitted as such to appear and plead in trials in any court. But an accused person may, if he desires it, be represented before the Session by any communing member of the same particular church. Before any other court, he may be represented by any member of the court. A member of the court serving in this capacity shall not be allowed to sit in judgment in the case.

§ 105-21. Process, in case of scandal, shall commence within the space of one year after the offense was committed, unless it has recently become flagrant or is of a continuing nature. When, however, a church member commits an offense, after removing to a place far distant from his former residence, and where his connection with the church is unknown, in consequence of which circumstances process cannot be instituted within the time above specified, the recent discovery of the church membership of the individual may be considered as equivalent to the offense itself having recently become flagrant. The same principle, in like circumstances, shall also apply to Ministers.

## CHAPTER 6

*Evidence*

§ 106-1. All persons of proper age and intelligence are competent witnesses, except such as do not believe in the existence of



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God, or a future state of rewards and punishments. The accused party may be allowed, but shall not be compelled, to testify, and no inference of guilt may be drawn from his failure to testify. The person originating the accusation shall be required to testify, on the demand of the accused. Either party has the right to challenge a witness whom he believes to be incompetent, and the court shall examine and decide upon his competency. The court shall also determine the amount of credibility to be attached to all evidence.

§ 106-2. Husbands and wives shall not be compelled to testify against each other.

§ 106-3. A charge may be established only by the testimony of two or more witnesses, or by the testimony of one witness together with corroborative evidence.

§ 106-4. If either party objects, no witness afterwards to be examined shall be present during the examination of another witness on the same case, unless he is a member of the court.

§ 106-5. Witnesses shall be examined first by the party introducing them, then cross-examined by the opposite party. After this any member of the court, or either party, may put additional questions. The Moderator shall rule as to the competency and relevancy of questions asked, subject to an appeal to the court; and the court shall not permit questions frivolous or irrelevant to the charge at issue.

§ 106-6. The oath or affirmation to a witness shall be administered by the Moderator in the following or like terms: "You solemnly promise, in the presence of God, that you will declare the truth, the whole truth, and nothing but the truth, according to the best of your knowledge in the matter in which you are called witness, as you shall answer it to the great Judge of the living and the dead." If, however, any witness for conscientious reasons prefers to swear or affirm in any other manner, he should be allowed to do so.

§ 106-7. Every question put to a witness shall, if required, be reduced to writing. When answered, it shall together with the

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answer be recorded, if deemed by the court or by either party, of sufficient importance, and the testimony of the witness shall be read to him for his approbation and subscription.

§ 106-8. The records of a court, or any part of them, whether original or transcribed, if regularly authenticated by the Moderator and Clerk, or by either of them, shall be deemed good and sufficient evidence in every other court.

§ 106-9. In like manner, testimony taken by one court, and regularly certified, shall be received by every other court as if it had been taken by itself. But the testimony of a witness in a different case in which the accused was not a party and had no opportunity to cross-examine shall not be admitted as evidence of the truth of the matters to which the witness testified.

§ 106-10. When it is not convenient for a court to have all or any part of the testimony in any particular case taken in its presence, a commission may be appointed, or co-ordinate court requested to handle the taking of testimony in question, which shall be considered as if taken in the presence of the court. Due notice of the commission or co-ordinate court and of the time and place of its meeting shall be given to the accused, that he may have an opportunity of attending. And if the accused desires, on his part, to take testimony at a distance, for his own exculpation, he shall give notice to the court of the time and place at which it is proposed to take it that a commission or co-ordinate court may be appointed for the purpose. Or the testimony may be taken on written interrogatories, by filing the same with the Clerk of the court having jurisdiction of the case, and giving two weeks' notice thereof to the adverse party, during which time he may file cross-interrogatories, if such are filed, and no notice need be given of the time and place of taking the testimony.

§ 106-11. A member of the court who has given testimony in a case becomes disqualified from sitting as a member during the remainder of the trial if either party makes objection.

§ 106-12. An officer or private member of the Church who refuses to testify may be censured by the court for contumacy.

§ 106-13. If after trial before any court new testimony is dis-

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covered which the accused believes important, it is his right to ask a new trial and it is within the power of the court to grant his request.

§ 106-14. If in the prosecution of an Appeal, new testimony is offered, which, in the judgment of the appellate court, has an important bearing on the case, it is proper for that court to refer the case to the lower court for a new trial, or, with the consent of parties, to take the testimony and proceed with the case.

## CHAPTER 7

*Process Against a Church Officer*

§ 107-1. Process against any Church officer shall be entered before the Church court which has jurisdiction over him.

§ 107-2. No Church officer should be screened in his sin or slightly censured on account of his office. On the other hand, scandalous charges should not be received against him on slight grounds.

§ 107-3. If anyone knows a Church officer to be guilty of a private offense, he should warn him in private. But if the offense is persisted in, or becomes public, he should bring the matter to the attention of some other appropriate Church officer for his advice.

§ 107-4. If a Church officer accused of an offense, having been twice duly cited, refuses to appear before the court to which he is subject, he shall be immediately suspended. If, after another citation, he still refuses to attend, he shall be deposed as contumacious, and suspended or excommunicated from the Church. Record shall be made of the judgment and of the charges under which he was arraigned, and the sentence shall be made public. The court may also, if it determines that the circumstances are sufficiently unusual to warrant such a procedure, appoint counsel to represent the interests of the accused Church officer and proceed to trial on the merits and impose a suitable censure.

§ 107-5. Heresy and schism may be of such a nature as to warrant Deposition; but errors should be carefully considered,

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whether they strike at the vitals of religion, and are industriously spread, or whether they arise from the weakness of human understanding, and are not likely to do much injury.

§ 107-6. If the Church court finds on trial that the matter complained of amounts to no more than such acts of infirmity as may be amended, so that little or nothing remains to hinder the Church officer's usefulness, it shall take all prudent measures to remove the scandal.

§ 107-7. When a Church officer makes confession pending a trial, if the matter is of a base and shameful character, however penitent he may appear to the satisfaction of all, the court shall, without delay, suspend him from the exercise of his office, or depose him therefrom.

§ 107-8. Whenever a Church officer wilfully and habitually fails to be engaged in the regular discharge of his official functions, it shall be the duty of the court having jurisdiction, at a stated meeting, to inquire into the cause of such dereliction, and, if necessary, to institute judicial proceedings against him for breach of his covenant engagement. In such a case, the Clerk shall, under the order of the court, forthwith deliver to the individual concerned, a written notice that, at the next stated meeting, the question of his being so dealt with is to be considered. This notice shall distinctly state the grounds for this proceeding. The party thus notified shall be heard in his own defense. If the court decides that his neglect proceeds from his want of acceptance to the Church, or from his lack of interest in the work of his office, it may divest him of his office without censure, even against his will, a majority of two-thirds being necessary for this purpose. The Church officer may appeal from this decision as if he had been tried after the usual forms. [See F.G. § 29-8.]

§ 107-9. A Minister suspended or deposed for scandalous conduct shall not be restored, even on the deepest sorrow for his sin, until he exhibits for a considerable time such an eminently exemplary, humble, and edifying walk and conversation as to heal the wound made by his scandal. And a deposed Minister shall in no case be absolved until it appears that the general sentiment of the Church is in his favor, and demands the removal of his

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Deposition; and then only by the court inflicting the censure, or with its consent.

§ 107-10. When a Minister is deposed or divested of office without censure, his church shall be declared vacant; but when he is suspended from office, it shall be left to the discretion of the Presbytery whether the censure includes the dissolution of the pastoral relation.

§ 107-11. When a Presbytery divests a Minister of his office without censure, or deposes him without Excommunication, it shall assign him to membership in some particular church, subject to the approval of the Session of that church.

§ 107-12. The status of a Minister who has been divested of his office without censure and assigned to membership in a particular church shall be the same as that of any other member. If he desires to re-enter the Ministry he shall proceed by seeking to place himself under care of Presbytery, in accordance with the procedure set out in chapter 24 of the Form of Government. Before receiving him the Presbytery shall also make careful inquiry into his Christian character, his previous record as a Minister, and his motives for seeking to re-enter the Ministry. If satisfied as to these matters the Presbytery may receive him under its care. When he has received a call to a definite work, the Presbytery may, if it seems wise, ordain him, following the procedure set out in Chapter 27 of the Form of Government.

## CHAPTER 8

*Infliction of Church Censures*

§ 108-1. When any member or officer of the Church is found guilty of an offense the court shall proceed with all tenderness and shall deal with its offending brother in the spirit of meekness, the members considering themselves lest they also be tempted.

§ 108-2. Church censures and the modes of administering them should be suited to the nature of the offenses. For private offenses censure should be administered in the presence of the court alone,

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or in private by one or more members of the court. For public offenses, the degree of censure and mode of administering it are within the discretion of the court, acting in accordance with paragraphs below which deal with particular censures. If the charge against a church member is one of gross crime or heresy, and the accused persists in his contumacy, the court may proceed to inflict the highest censure.

§ 108-3. The censure of Admonition should be administered in private by one or more members of the court if the offense is known only to a few and is not aggravated in character. If the offense is public, the Admonition should be administered by the Moderator in the presence of the court and may also be announced in public if the court deems it expedient.

§ 108-4. The censure of definite Suspension should be administered in the presence of the court alone, or in open session of the court, as it may deem best, and public announcement thereof shall be made at the court's discretion.

§ 108-5. The censure of indefinite Suspension should be administered after the manner prescribed for definite Suspension, but with added solemnity, that it may be the means of impressing the mind of the offender with a proper sense of his danger, and, under the blessing of God, of leading him to repentance. When the court has resolved to pass this sentence, the Moderator shall address the offending brother to the following purpose:

"WHEREAS, You, A. B. (here describe the person as a Minister, Ruling Elder, Deacon, or private member of the church), are convicted by sufficient proof [or, are guilty by your own confession] of the sin of——(here insert the offense), we, the Presbytery [or, Session] of C. D., in the name and by the authority of the Lord Jesus Christ, do now declare you suspended from the Sacraments of the Church [or, from the exercise of your office; or, from the Sacraments of the Church and from the exercise of your office] until you give satisfactory evidence of your repentance."

To this shall be added such advice or admonition as may be judged necessary, and the whole pronouncement shall be concluded with prayer to Almighty God that he follow this act of discipline with his blessing.

§ 108-6. The censure of Excommunication may be administered



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in the presence of the court alone, or in open session of the court, or in public, as the court may decide. In administering this censure the Moderator of the Session [or of the Presbytery] shall make a statement of the several steps which have been taken with respect to the offending brother, and of the decision to cut him off from the communion of the Church. He shall then show, from Matthew 18:15-18 and I Corinthians 5:1-5, the authority of the Church to cast out unworthy members, and shall explain the nature, use, and consequences of this censure. He shall then administer the censure in the words following:

"WHEREAS, A. B., a member of this Church, has been, by sufficient proof, convicted of the sin of——, and after much admonition and prayer, obstinately refuses to hear the Church, and has manifested no evidence of repentance: Therefore, in the name and by the authority of the Lord Jesus Christ, we, the Session of the Church of C. D. [or the Presbytery of E. F.], do pronounce him to be excluded from the Sacraments, and cut off from the fellowship of the Church."

Prayer shall then be made that by God's blessing this solemn action of the court may issue in the repentance and restoration of the offender, and in the establishment of all true believers.

§ 108-7. The censure of Deposition shall be administered by the Moderator in the words following:

"WHEREAS, A. B., a Minister of this Presbytery [or a Ruling Elder, or Deacon, of this church], has been proved, by sufficient evidence, to be guilty of the sin of——, we the Presbytery [or Session] of C. D., do adjudge him disqualified for the office of Minister of the Word and Sacraments [or Ruling Elder, or Deacon], and therefore we do hereby, in the name and by the authority of the Lord Jesus Christ, depose from the office of Minister [or Ruling Elder, or Deacon] the said A. B., and do prohibit him from exercising any of the functions thereof." If the censure includes Suspension or Excommunication, the Moderator shall proceed to say: "We do, moreover, by the same authority, suspend the said A. B. from the Sacraments of the Church, until he shall exhibit satisfactory evidence of sincere repentance," or "exclude the said A. B. from the Sacraments, and cut him off from the fellowship of the Church."

The sentence of Deposition should be inflicted with solemnities similar to those prescribed in the case of Excommunication.

## CHAPTER 9

*Removal of Censure*

§ 109-1. After any person has been suspended from the Sacraments or from office, it is proper that the rulers of the Church frequently converse with him as well as pray with him and for him, that it may please God to give him repentance.

§ 109-2. When the court is satisfied as to the reality of the repentance of a suspended offender, he shall be allowed to profess his repentance, either in the presence of the court alone, or publicly, and be restored to the Sacraments of the Church, and to his office, if this is the judgment of the court. The restoration shall be declared to the penitent in words of the following import:

"WHEREAS, You, A. B., have been debarred from the Sacraments of the Church [or, from the office of Minister, or Ruling Elder, or Deacon; or, from the Sacraments of the Church and from the office of Minister, or Ruling Elder, or Deacon], but now have manifested such repentance as satisfies the Church, we, the Session [or Presbytery] of C. D., do hereby in the name and by the authority of the Lord Jesus Christ absolve you from the said sentence of Suspension, and do restore you to the full communion of the Church [or, to the exercise of your office, and all the functions thereof; or, to the full communion of the Church and to the exercise of your office, and all the functions thereof]."

After this there shall be prayer and thanksgiving.

§ 109-3. When an excommunicated person is so affected with his state as to be brought to repentance, and to desire to be readmitted to the communion of the Church, the court, having obtained sufficient evidence of sincere repentance, shall proceed to restore him. This may be done in the presence of the court or of the congregation, as seems best to the court. When there has been a public censure, restoration should ordinarily be public also.

On the day appointed for his restoration, the Minister shall call upon the excommunicated person, and propose to him in the presence of the court, or of the congregation, the following questions:

"Do you, from a deep sense of your great wickedness, freely con-

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fess your sin in thus rebelling against God, and in refusing to hear his Church; and do you acknowledge that you have been in justice and mercy cut off from the communion of the Church?"

Answer: "I do."

"Do you now voluntarily profess your sincere repentance and contrition for your sin and obstinacy; and do you humbly ask the forgiveness of God and his Church?"

Answer: "I do."

"Do you sincerely promise, through divine grace, to live in all humbleness of mind and circumspection; and to endeavor to adorn by a holy life the doctrine of God our Saviour?"

Answer: "I do."

Here the Minister shall give the penitent a suitable exhortation, encouraging and comforting him. Then he shall pronounce the declaration of restoration in the following words:

"WHEREAS, You, A. B., have been shut out from the communion of the Church, but have now manifested such repentance as satisfies the Church; in the name of the Lord Jesus Christ, and by his authority, we, the Session of this Church, do declare you absolved from the sentence of Excommunication formerly pronounced against you; and we do restore you to the communion of the Church, that you may be a partaker of all the benefits of the Lord Jesus to your eternal salvation."

The whole procedure shall be concluded with prayer and thanksgiving.

§ 109-4. The removal of censure from a deposed officer, after confession has been made in a manner similar to that prescribed in the case of the removal of censure from an excommunicated person, shall be announced to him by the Moderator in the following form, namely:

"WHEREAS, You, A. B., formerly a Minister of this Presbytery [or a Ruling Elder, or a Deacon of this church], have been deposed from your office, but have now manifested such repentance as satisfies the Church; in the name of the Lord Jesus Christ, and by his authority, we, the Presbytery of . . . . . [or the Session of this church], do declare you absolved from the said sentence of Deposition formerly pronounced against you; and we do furthermore declare you eligible for attaining again to your said office, and to the exercise of all the functions thereof, whenever you may be orderly called thereto and ordained."

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After this there shall be prayer and thanksgiving, and the members of the court shall extend to him the right hand of fellowship.

§ 109-5. A Ruling Elder or Deacon whose censure of Deposition has been removed, cannot resume the exercise of his office in the church without re-election by the people and ordination in the office.

§ 109-6. When a person under censure removes to a part of the country remote from the court by which he was sentenced, and desires to profess repentance and obtain restoration, the court may, if it deems expedient, transmit a certified copy of its proceedings to the Session (or Presbytery) where the offender resides, which shall take up the case and proceed with it as though it had originated there.

§ 109-7. In the restoration of a Minister who has been suspended, the Presbytery should proceed with great caution. Its first step is to admit him to the Sacraments if he has been debarred from them. Afterwards, it may grant him the privilege of preaching on probation for a time, so as to test the sincerity of his repentance and the prospect of his usefulness. When satisfied in these respects, the Presbytery may take steps to restore him to his office. But the case shall remain under judicial consideration until a declaration of restoration has been pronounced.

§ 109-8. When a Minister has been deposed from office, the Presbytery should proceed with the greatest caution. After first admitting him to the Sacraments, if he has been debarred from them, it may remove the censure of Deposition. Thereafter, if he desires to re-enter the Ministry, he shall follow the procedure set forth in chapters 24 and 27 of the Form of Government. Before receiving him under its care as a candidate and before ordaining him, the Presbytery shall inquire particularly into his previous record as a Minister and his motives for seeking to re-enter the Ministry.

## PART IV

## Procedural Rules for Informal Disposition (Cases without Process)

## CHAPTER 10

*Confession*

§ 110-1. When any person comes forward of his own accord and makes his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process or formal trial. Judgment shall be rendered in the same fashion upon a person against whom charges are pending but who desires to acknowledge his guilt without submitting to formal trial.

## CHAPTER 11

*Renouncing the Jurisdiction of the Church*

§ 111-1. If a communing member of the church against whom no charges are pending requests the Session to remove his name from the church roll or to transfer it to the roll of non-communing members, the Session has authority to grant the request. This action may be announced to the congregation if this seems wise and proper. The transfer, however, should not be made until the Session, after inquiry and due delay, is of the judgment that the request does not spring from temporary doubt or special temptation.

§ 111-2. When a church member renounces the communion of this Church by joining some other Church, if he is in good standing, the irregularity shall be recorded, and his name erased. If charges are pending against him, they shall be communicated to the Church which he has joined.

§ 111-3. When a Church officer, whether Minister, Ruling Elder, or Deacon, renounces the communion or authority of this Church

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by a statement or by joining some other Church recognized by our own as a true branch of the Church of Christ, the court having jurisdiction shall record the irregularity and withdraw from him all authority to exercise office derived from this Church. If charges are pending against him, the court shall communicate to the Church the officer has joined a full statement of the charges pending. When a Church officer renounces the communion of this Church by affiliating himself with some organized religious body which is heretical or schismatic, the court having jurisdiction shall make a full record of the irregularity, and declare that he is divested of his office in the Church and no longer possesses any rights or authority pertaining thereto, and that he no longer has the privilege of coming to the Lord's Table in this communion.

§ 111-4. A Church officer who has renounced the jurisdiction of this Church and who desires to be restored shall apply to the same Church court under whose jurisdiction he was when his relationship with this communion was severed. The court shall hear him, and, if satisfied, may restore his membership. In the case of a former Minister, the Presbytery shall assign him to membership in some particular church subject to the approval of the Session of that church. Restoration to office in the Church can be accomplished only by passing through all the steps necessary for a man's being called to office in the Church for the first time, including ordination.

## CHAPTER 12

*Divesting of Office on Request*

§ 112-1. A Church officer against whom there are no charges, if he is fully satisfied in his own conscience that God has not called him to the office, or if he has satisfactory evidence of his inability to serve the Church with acceptance, may report these facts at a stated meeting of the court having jurisdiction over him. At the next stated meeting, if, after full deliberation, the court concurs with him in judgment, it may divest him of his office without censure.



## PART V

## Appellate Jurisdiction

## CHAPTER 13

*Modes by Which the Proceedings of a Lower Court Come Before a Higher Court*

§ 113-1. The acts and decisions of a lower court are brought under the supervision of a higher court in one of the following modes: (1) Review and Control; (2) Reference; (3) Appeal; (4) Complaint.

§ 113-2. When the proceedings of a lower court are before a higher court the members of the lower court do not lose the right to sit, deliberate, and vote in the higher court, except in cases of Appeal or Complaint.

## CHAPTER 14

*General Review and Control*

§ 114-1. It is the right and duty of every court above the Session to review, at least once a year, the records of the court next below, and if any lower court fails to present its records for this purpose, the higher court may require them to be produced either immediately or at any time fixed by the higher court.

§ 114-2. In reviewing records of a lower court the higher court is to examine: (1) Whether the proceedings have been correctly recorded; (2) whether they have been regular and in accordance with the Constitution; (3) whether they have been wise, equitable, and suited to promote the welfare of the Church; (4) whether the lawful injunctions of the higher court have been obeyed.

§ 114-3. It is ordinarily sufficient for the higher court merely to record in its own minutes and in the records reviewed, whether it approves, disapproves, or corrects the records in any particular;

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but if any serious irregularity is discovered the higher court may require its reconsideration and correction by the lower court.

§ 114-4. Proceedings in judicial cases, however, are not dealt with under review and control when notice of Appeal or Complaint has been given the lower court; and no judgment of a lower court in a judicial case shall be reversed except by Appeal or Complaint.

§ 114-5. If a court neglects to perform its duty, with the result that heretical opinions or corrupt practices are allowed to gain ground, or offenders of a very gross character are suffered to escape, or some circumstances in its proceedings of great irregularity are not distinctly recorded, its records may not exhibit to the higher court a full view of its proceedings. When, therefore, the next higher court is advised that any such neglect or irregularity has occurred on the part of the lower court, it should take cognizance thereof, and examine, deliberate, and judge in the whole matter as completely as if it had been recorded, and thus brought up by the review of the records.

§ 114-6. When any court having appellate jurisdiction is advised, either by the records of the court next below or by memorial, either with or without protest, or by any other satisfactory method, of any important delinquency or grossly unconstitutional proceedings of the lower court, it shall cite the lower court to appear by representative or in writing, at a specified time and place, and to show what it has done or failed to do in the case in question. As circumstances require, the court thus issuing the citation may (1) reverse or redress the proceedings of the court below in matters other than judicial cases, or (2) censure the delinquent court, or (3) remit the whole matter to the delinquent court, with an injunction to take it up and dispose of it in a constitutional manner, or (4) stay all further proceedings in the case.

§ 114-7. In process against a lower court, the trial shall be conducted according to the rules provided for process against individuals, so far as they may be applicable.

## CHAPTER 15

*References*

§ 115-1. A Reference is a written representation and application made by a lower court to a higher court for advice or other action on a matter pending before the lower court, and is ordinarily to be made to the next higher court.

§ 115-2. Among proper subjects for Reference are matters which are new, delicate, or difficult; or which have produced a serious division among the members of the lower court; or which relate to questions involving the Constitution and legal procedure respecting which the lower court feels the need of guidance.

§ 115-3. In making a Reference the lower court may ask either for advice or for final disposition of the matter referred. In particular it may refer a judicial case with request for its trial and decision by the higher court.

§ 115-4. A Reference may be presented to the higher court by one or more representatives appointed by the lower court for this purpose, and it should be accompanied with so much of the record as is necessary for proper understanding and consideration of the matter referred.

§ 115-5. Although References are sometimes proper, yet in general it is better that every court should itself discharge the duty assigned it under the law of the Church. A higher court is not required to accede to the request of the lower court, but it should ordinarily give advice when so requested.

§ 115-6. When a court makes a Reference, it should have all the testimony and other documents duly prepared, produced, and in perfect readiness, so that the higher court may be able fully to consider and issue the case with as little difficulty or delay as possible.

## CHAPTER 16

*Appeals*

§ 116-1. An Appeal is the transfer to a higher court of a judicial case on which judgment has been rendered in a lower court, and is allowable only to the accused party. [See § 107-8.] The parties shall be known as the appellant and appellee. An Appeal cannot be made to any court other than the next higher, except with its consent.

§ 116-2. Only those who have submitted to a regular trial are entitled to an Appeal. Those who have not submitted to a regular trial are not entitled to an Appeal.

§ 116-3. The grounds of Appeal include such matters as the following: any irregularity in the proceedings of the lower court; impairment of procedural rights; refusal of reasonable indulgence to a party on trial; receiving improper, or declining to receive proper, evidence; rendering a decision before all the testimony is taken; manifestation of bias or prejudice in the case; and manifest injustice in the judgment or censure. To sustain an Appeal the ground must be not a mere technicality but must involve real harm to the appellant's case.

§ 116-4. Written notice of Appeal, with the reasons supporting it, shall be given the court before it adjourns, or shall within ten days thereafter be filed with the Moderator or Clerk of the court.

§ 116-5. The appellant shall lodge his appeal and the reasons therefor with the Clerk of the higher court at least three days before the opening of its sessions. It is the duty of the Clerk of the lower court to file with the Clerk of the higher court by the same time a copy of all the proceedings in connection with the case, including the notice of Appeal and reasons therefor, the evidence, and any papers bearing on the case. These constitute the Record of the Case, and the higher court shall not admit or consider anything not found in this Record without consent of the parties in the case. [See § 105-19.] An appellant to the General Assembly shall lodge his appeal and the reasons therefor with the Clerk of the General Assembly by February 1st in order to permit time for a proper hearing of the case by the Permanent Judicial Com-

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mission prior to the meeting of the General Assembly of that year.

§ 116-6. Notice of Appeal ordinarily has the effect of suspending the judgment of the lower court until the case has been finally decided in the higher court. If, however, the censure is Suspension or Excommunication from the sealing ordinances, or Deposition from office, the court from which the case has come may, for sufficient reasons duly recorded, put the censure into effect until the case is finally decided.

§ 116-7. After a higher court has decided that an Appeal is in order and should be entertained by the court, the following procedure should be followed: (1) The complete Record of the Case shall be read, except any part of it that may be omitted by consent of the parties and the court itself; (2) the parties shall be heard, the appellant having the right of opening and closing the argument; (3) opportunity shall be given the members of the appellate court to express their opinions; (4) the vote shall then be taken on each specification, in this form: "Shall this specification of error be sustained?" If the court deems it wise, it may adopt a minute explanatory of its action which becomes a part of its Record in the Case.

§ 116-8. The decision of the higher court may be to confirm or to reverse, in whole or in part, the judgment of the lower court; or to remit the case to a lower court for the purpose of amending the Record, if it appears incorrect or defective; or to send the case back for a new trial. In every case a full Record shall be made, and a copy of it shall be sent to the lower court.

§ 116-9. An Appeal will be treated as abandoned, if the appellant does not appear before the higher court in person, or by counsel, at its meeting next following the date of his notice of Appeal; and the judgment of the lower court will stand, unless the appellant gives the court satisfactory explanation of his failure to appear and prosecute the Appeal. [See F.G. § 20-2, 5, 8.]

§ 116-10. If an appellant manifests a litigious or otherwise unchristian spirit in the prosecution of his Appeal, he shall receive a suitable rebuke by the appellate court.

§ 116-11. If a lower court neglects to send up the Record of the Case, or any part of it, to the injury of the appellant, it shall re-

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ceive a proper rebuke from the higher court, and the judgment from which the Appeal has been taken shall be suspended until an adequate Record is produced upon which the issue can be fairly tried.

## CHAPTER 17

*Complaints*

§ 117-1. A Complaint is a written representation made to a higher court against some act or decision of a lower court, or made to the appointing court against some act or decision of a Commission.

It is the right of any communing member of the Church in good standing to make Complaint against any action of a lower court, or of a Commission of such court, to whose jurisdiction he is subject, except a decision in a judicial case in which an Appeal is taken.

A Complaint against a Commission action must go to the appointing court, which may hear the matter in the presence of the whole court or may make of it a Reference to the next higher court. A Complaint against an action taken by a court itself must go to the next higher court. No Complaint can be taken against the action of the General Assembly or of a Commission appointed by it.

§ 117-2. Notice of Complaint shall not have the effect of suspending the action against which the Complaint is made, unless one third of the members present when the action was taken shall vote for its suspension until the final decision in the higher court.

§ 117-3. The court against which Complaint is made shall appoint one or more representatives to defend its action, and the parties in the case are designated as complainant and respondent.

§ 117-4. The provisions relating to an Appeal found in sections 116-3, 116-4, 116-5, 116-7, 116-9, 116-10, and 116-11 shall apply to a Complaint.

§ 117-5. The higher court has power, in its discretion, to annul the whole, or any part, of the action of a lower court against



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which Complaint has been made, or to send the matter back to the lower court with instructions for a new hearing.

§ 117-6. In voting upon a Complaint, the vote shall be either to sustain, to sustain in part, or not to sustain.

§ 117-7. The effect of a vote to sustain shall be to sustain each of the items or counts of the Complaint; that of a vote not to sustain shall be to annul each of the items or counts of the Complaint; and that of a vote to sustain in part shall be to sustain one or more specific items or counts of the Complaint.

§ 117-8. Those voting to sustain in part shall be required when voting to state what item or items, count or counts, of the Complaint they desire to sustain.

§ 117-9. In making up the vote on the Complaint only those items or counts shall be declared to be sustained for the sustaining of which a majority of the votes cast has been given.

## PART VI

## Miscellaneous

## CHAPTER 18

*Decision by an Administrative Commission  
or by a Judicial Commission*

§ 118-1. In accordance with the provisions of Chapter 19 of the Form of Government, a Presbytery or Synod may appoint Administrative Commissions and Judicial Commissions.

§ 118-2. Commissions of either sort shall submit a full Record to the court. [See § 105-19.] The Commission's minutes, including its decisions on the matter, shall be entered on the minutes of the court at its next session. If no Complaint has been filed, this shall be the action and judgment of the court itself. The remainder of the Record of the matter shall be preserved by the Stated Clerk of the court.

§ 118-3. The decision of a Commission shall take effect on the date the Record is filed with the Stated Clerk of the court. On reaching its decision, the Commission shall promptly inform the parties and let them know the date on which the Record will be filed with the Clerk.

§ 118-4. Notice of Appeal or notice of Complaint, either by a party in the matter or by a member of the Commission, must be given within ten days from the date the Record is filed with the Clerk, and must be given to both the Clerk of the court and to the Chairman of the Commission.

§ 118-5. Such notice of Complaint may contain a request that the effect of the decision be suspended until the Complaint is heard. In such case the decision is automatically suspended until the Commission can meet and vote on the request. Such a meeting of the Commission must be held as soon as practicable. If one-third of the members of the Commission present when the action was taken shall vote to suspend the effect of the decision, it shall be suspended until the court hears and determines the case.

## CHAPTER 19

*Minority Opinions*

§ 119-1. A Dissent is a declaration on the part of one or more members of a minority in a court, expressing a different opinion from that of the majority in a particular case. A Dissent unaccompanied with reasons shall be entered in the records of the court.

§ 119-2. A Protest is a more solemn and formal declaration by one or more members of a minority, bearing their testimony against what they deem an unwise or erroneous judgment, and is generally accompanied with a statement of the reasons on which it is founded.

§ 119-3. If a Protest or Dissent is couched in temperate language, and is respectful to the court, it shall be recorded. The court may, if it wishes, put an answer to the Protest on the records along with it. Here the matter shall end, unless the parties protesting obtain permission to withdraw their Protest absolutely, or to amend it.

§ 119-4. The only persons who can join in a Protest against a decision of any court are those who had a right to vote in the case.

THE DIRECTORY FOR THE WORSHIP  
AND WORK OF THE CHURCH

## The Directory for the Worship and Work of the Church\*



### Preface

#### THE SERVICE OF GOD

God, who chose us to be his people, calls us to serve him through worship and work. Therefore the Church must examine its common life, and Christians their private lives, to the end that all may live as servants of God obeying his commands.

#### I

Christian worship depends upon and is a response to the presence of God, the Father, Son, and Holy Spirit, and to what God has done for us and for our salvation, which we acknowledge by acts of adoration, confession, thanksgiving, petition, and obedience.

The Church worships as believers, sharing a common life of faith, hope, love and commitment, assemble in common public worship. Christians worship God privately as individuals and as families. We worship always as members of the Body of Christ.

#### II

The work of the Church is a response to God's grace and is done in obedience to the will of God as this will is made known in Scripture. It is expressed in proclamation of and witness to the Word of God, and in deeds of love and mercy. Through this service Christians seek the fulfillment of the divine purposes in society and history.

#### PART I

### The Worship of God

#### A. The Worship of God Through Word and Sacrament

\* Approved and enacted by the General Assembly, April 30, 1963.

#### § 201-1

#### CHAPTER 1

##### *The Lord's Day, A Holy Day*

§ 201-1. From the days of the Apostles, Christians have observed the first day of the week as the Christian Sabbath because on it our Lord Jesus Christ was raised from the dead.

§ 201-2. God has appointed one day in seven to be kept holy to the Lord, and to be used for his glory. The people are to abstain from all unnecessary labor, and from recreation which violates or interferes with the character of the day. In the observance of the day Christians are to be guided by the Word of God as illumined by the Holy Spirit and as interpreted by the Standards of this Church.

§ 201-3. All Christians are to prepare for the approach of this day. They should so arrange their affairs and so use their influence that no one will be kept unnecessarily from the public worship of God and the proper use of the Lord's Day. Each church should provide for the worship and spiritual welfare of those whose affairs prevent their participation in the regular services of the Lord's Day.

§ 201-4. It is the privilege and obligation of all the people of God on the Lord's Day to participate in the public worship of God.

§ 201-5. No one shall be excluded from participation in public worship in the Lord's house on the grounds of race, color, or class.

#### CHAPTER 2

##### *The Ordering of Public Worship*

§ 202-1. God has ordained that he be publicly worshipped by his people through music and singing, prayer, the reading of Holy Scripture, the preaching of the Word of God, the making of offerings, and the administering of the Sacraments of Baptism and of the Lord's Supper.

§ 202-2. The Church does not prescribe the sequence of these acts of worship. The Pastor, in consultation with the Church Session, has the responsibility for sequence and proportion of the various parts of public worship. The Pastor and Session shall be



mindful of Scriptural guidance for worship, of the heritage of the Presbyterian Church, of the needs and particular circumstances of the congregation, and of the provisions of this Directory for Worship.

§ 202-3. It is appropriate that the worship of the Church provide occasion for recalling the birth of our Lord Jesus Christ, his death, resurrection, ascension and coming again, and the sending of the Holy Spirit. It is also fitting that such days be celebrated as recall the heritage of the Church, proclaim its mission, and forward its work.

### CHAPTER 3

#### *The Assembling of the Congregation and Their Behavior During Common Worship*

§ 203-1. The worship of God requires preparation by prayer, meditation, study of the Bible and physical rest, so that body and mind may be alert to the privileges and responsibilities of the Lord's Day. Church members are specially enjoined to pray for the Minister and to ask God's blessing on the congregation.

§ 203-2. In response to the call of God, the people are to assemble at the appointed time, that all being present at the beginning they may unite with one heart in all the parts of public worship. No one should leave until after the benediction.

§ 203-3. The people are to enter the Lord's house, be seated in a reverent manner, and engage in silent prayer for a blessing upon themselves, the Minister, and all present, as well as upon those who are kept from the place of worship.

§ 203-4. All who attend public worship are to participate with reverence and godly fear, forbearing to engage in any conduct unbecoming to the place and occasion. Children should sit with their families so that they may worship together.

### CHAPTER 4

#### *The Public Reading and Hearing of the Holy Scripture*

§ 204-1. The reading and hearing of the Holy Scripture in the congregation is a part of the public worship of God. The reading

should be done by the Pastor or some person properly invited.

§ 204-2. The Pastor shall have discretion in the choice of Scripture and in the length of the passage read. He should exercise care to the end that over a period of time the people shall hear the full message of Scripture.

### CHAPTER 5

#### *The Singing of Psalms and Hymns and the Music of Public Worship*

§ 205-1. Christians are to praise God by singing psalms and hymns, publicly in the church.

§ 205-2. Psalms and hymns are prayers and praises of the congregation. The congregation should be informed as to the content of the songs of worship so that they may be sung with understanding. Church music should be subservient to the purpose of worship and subject to the rule that in worship we offer God our best gifts.

§ 205-3. The Session has responsibility for the choir, the persons leading music, and the necessary provisions and arrangements which the full participation of the congregation in this worship requires. Choirs and musical instruments are aids to, not substitutes for, the participation of the congregation.

### CHAPTER 6

#### *Public Prayer*

§ 206-1. The leadership of public prayer in the worship of the congregation is ordinarily the duty of a Minister. He may upon occasion invite other persons to lead in prayer.

§ 206-2. Ministers are not to be confined to fixed forms of prayer for public worship. Yet it is the duty of the Minister, previous to entering upon his office, to prepare and qualify himself for this part of his work, as well as for preaching. He should by a life of communion with God, by a thorough acquaintance with the Holy Scriptures, by the study of the best writers on prayer, and by meditation endeavor to acquire the gift of prayer. Moreover, when he is to offer prayer in public worship, he should compose his spirit and so order his thoughts that he may perform

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## § 206-3

this duty with dignity and propriety, and with profit to the worshippers, lest he degrade this important service.

§ 206-3. The posture of the people in public prayer should always be reverent.

§ 206-4. Public prayer should embrace the following elements: adoration, thanksgiving, confession, supplication, and intercession.

§ 206-5. The Minister shall determine the emphasis which is to be given to these various elements of prayer within the order for public worship. He shall strive to express in prayer the particular needs of that congregation whose worship he leads.

§ 206-6. In *Adoration* the people are to adore the glory and perfection of God as they are made known in his works of creation and providence, in the clear and full revelation he has made in Jesus Christ, and in the work of the Holy Spirit.

In *Thanksgiving* the people are to offer gratitude and praise to God for all his mercies, general and particular, spiritual and temporal; above all, for Christ Jesus, Savior and Lord, and for the life eternal which is in him.

In *Confession* the people are humbly to acknowledge unto God their sinfulness in nature and in act, and their sins both of omission and of commission, with a deep sense of the evil of all sin committed against God, our neighbor, and ourselves. They shall ask forgiveness through Jesus Christ. The confession should be concluded by the Minister's affirming the assurance of pardon through Jesus Christ as promised in Holy Scripture.

In *Supplication* the people are to ask earnestly through Jesus Christ for the outpouring of the Holy Spirit, for peace with God accompanied by all the fruits of that peace, for abundant supplies of the grace necessary to enable them to be obedient unto God, for support and comfort under trials, and for needed temporal blessings.

In *Intercession* the people are to offer petition on behalf of others: for the visible kingdom of Christ, his Church Universal; for the interest and welfare of human society; and for all to whom God has given civil authority.

§ 206-7. The prayer which Christ taught his disciples should be used in the public prayers of the congregation.

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## § 207-1

## CHAPTER 7

*The Preaching of the Word*

§ 207-1. The preaching of the Word is an ordinance of God for the salvation of men. The Minister should diligently apply himself to preaching, and prove himself a workman who needs not to be ashamed, rightly interpreting the Word of truth.

§ 207-2. The purpose of preaching is to set forth the teachings of the Scriptures and their proper application to the needs of the people. For this reason the sermon must be a responsible proclamation of the Biblical message spoken to contemporary life.

§ 207-3. Preaching requires study, meditation and prayer. Ministers should prepare their sermons with care, and not indulge themselves in loose, extemporary harangues, nor serve God with that which costs them nothing. They should keep to the simplicity of the Gospel and express themselves in language that can be understood by all. They should also by their lives adorn the Gospel which they preach and be examples to believers in word and deed.

§ 207-4. Public worship is not complete without the preaching of the Word, but the sermon should not obscure the significance of the other elements of worship.

§ 207-5. No person shall be permitted to preach in any church except by invitation from both Pastor and Session, unless sent by the Presbytery. If there is no Pastor, the Session's invitation is sufficient.

## CHAPTER 8

*The Worship of God by Offerings*

§ 208-1. The Holy Scriptures teach that God is the owner of all persons and all things, and that we are but stewards of both life and possessions; that God's ownership and our stewardship should be acknowledged; that this acknowledgment should take the form, in part, of giving a worthy proportion of our income to the Church of Jesus Christ, thus worshipping the Lord with our possessions; and that the remainder should be used in a manner becoming to Christians.

§ 208-2. A time should be appointed in the order of public

worship for receiving, with appropriate prayer, the offerings of the people.

## CHAPTER 9

### *The Sacrament of Baptism*

§ 209-1. The Sacrament of Baptism may be administered only by an ordained Minister of the Word.

§ 209-2. It is the obligation and privilege of parents to present their children for baptism, thereby claiming God's covenant promises to believers and their children. The baptism of infants is not to be unnecessarily delayed.

§ 209-3. Baptism of infants takes place only within the fellowship of the Christian Church. For this reason the child to be baptized must be presented by one or both believing parents, or, in the absence of such parent, by some believing person responsible for the child, who signifies his desire that the child be baptized and who assumes responsibility for the child's Christian nurture and rearing in the fellowship of the Christian Church. Likewise, baptism ought to be administered only in the presence of the congregation which pledges itself as the child's sponsor to the end that the child may confess Jesus Christ as Lord and Savior. If, in the judgment of the Minister, it should be necessary for baptism to be administered outside the presence of the congregation, the congregation should be represented by at least one member of the Session in addition to the Minister.

§ 209-4. Baptism of infants should be preceded by appropriate words of instruction as to the institution and meaning of the Sacrament. It is fitting that congregation and parents should confess the faith in which the child is baptized, using a proper symbol, such as the Apostles' or Nicene Creed. The congregation in an appropriate manner should signify assumption of responsibility for the Christian nurture of the child. The parents should likewise acknowledge their obligation. The charge to parents and congregation should be specific, placing emphasis upon instruction in the Bible and doctrine of the Church, the Christian life of the family, and the fellowship and mission of the Church.

§ 209-5. The Minister shall propose to the parents the following or like questions:

- (1) Do you acknowledge your child's need of the cleansing

blood of Jesus Christ, and the renewing grace of the Holy Spirit?

(2) Do you claim God's covenant promises in (his) behalf, and do you look in faith to the Lord Jesus Christ for (his) salvation, as you do for your own?

(3) Do you now unreservedly dedicate your child to God, and promise, in humble reliance upon divine grace, that you will endeavor to set before (him) a Godly example, that you will pray with and for (him), that you will teach (him) the doctrines of our holy religion, and that you will strive, by all the means of God's appointment, to bring (him) up in the nurture and admonition of the Lord?

The Minister shall then propose to the congregation the following or like question:

Do you, in the name of the Church, undertake responsibility for the Christian nurture of this child?

§ 209-6. Then the Minister shall pray for a blessing to attend this ordinance after which, calling the child by his full name, he shall say:

Child of the Covenant, I baptize thee in the name of the Father, and of the Son, and of the Holy Spirit.

As he pronounces these words, he shall baptize the child with water, by pouring or sprinkling it on the head of the child, without adding any other ceremony.

§ 209-7. The Minister shall declare that the child who has been baptized is a member of the household of faith and that the parents and the congregation are to provide spiritual nurture for him in faith that God will bring him to confess Jesus Christ as Lord and Savior.

§ 209-8. The service is to be concluded with an appropriate prayer for the child and for all the children and families of the congregation.

§ 209-9. Persons not already baptized shall be baptized upon their profession of faith, and admitted to the Church and its privileges, including participation in the Lord's Supper.



## CHAPTER 10

*Profession of Faith and Admission to the Lord's Table*

§ 210-1. Children born within the Church are under the care of a particular church. They are to be taught to love God, and to obey and serve the Lord Jesus Christ. When they come to years of discretion they should be earnestly reminded by parents and Church Session that they are members of the Church by birthright, and that it is their duty and privilege personally to profess before men their faith in Christ and to seek admission to the Lord's Table and enrollment as communing members in a particular church.

§ 210-2. The time when young persons come to years of discretion is not precisely fixed. It is left to the prudence of the Session to judge, after careful examination, the faith in and commitment to Christ on the part of those who apply for admission to the Lord's Table. Instruction should be given in the faith of the Church especially as contained in the Larger and Shorter Catechisms. Knowledge and understanding of the Lord's Prayer, the Apostle's Creed, the Ten Commandments and the Sacraments are desirable.

§ 210-3. When unbaptized persons apply for admission to the Lord's Table and full membership in a church, they shall give to the Session satisfaction with respect to their faith and commitment, make a profession of their faith and purpose of obedience, and thereupon be baptized. This profession and baptism shall be done in the presence of the congregation unless there are extraordinary reasons to the contrary. The Session shall admit them to the Lord's Table and enroll them as communing members of the particular church.

§ 210-4. When persons baptized in infancy apply for admission to the Lord's Table and full membership in a church, they shall give to the Session satisfaction with respect to their faith and commitment, and make a profession of their faith and purpose of obedience. This profession and baptism shall be done in the presence of the congregation unless there are extraordinary reasons to the contrary. The Session shall admit them to the

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Lord's Table and enroll them as communing members of the particular church.

§ 210-5. The time having come during public worship for the making of a public profession of faith and obedience, and those who have been approved by the Session having taken their places in the presence of the congregation, the Minister shall proceed after the following or like form:

(a) He shall state that of the number of those who were baptized in infancy as members of the Church by birthright and heirs of the covenant promises, the Session has examined and approved as to (their) faith in Christ, and knowledge to discern the Lord's body A, B and C, who come now to assume for themselves the full privileges and responsibilities of their inheritance in the household of faith.

(b) If there are present any candidates for baptism, the Minister shall state that: the Session has examined and approved as to (their) acceptance of Christ as Savior and Lord D, E and F, who are cordially welcomed into the goodly fellowship of believers and present themselves for baptism.

(c) The Minister shall then address those making a profession, using the following or like form:

(All of you) being present to make a public profession of your faith, are to assent to the following declarations and promises, by which you enter into a solemn covenant with Christ and his Church:

(1) Do you acknowledge yourselves to be sinners in the sight of God, justly deserving his displeasure, and without hope save in his sovereign mercy?

(2) Do you believe in the Lord Jesus Christ as the Son of God and Savior of sinners, and do you receive and depend upon him alone for salvation as he is offered in the Gospel?

(3) Do you now resolve and promise, in humble reliance upon the grace of the Holy Spirit, that you will endeavor to live as becomes the followers of Christ?

(4) Do you promise to serve Christ in his Church by supporting and participating in its worship and work to the best of your ability?

(5) Do you submit yourselves to the government and discipline

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of the Church, and promise to further its purity and peace?

After these questions have been answered in the affirmative, baptism may be administered if there are present any candidates for this ordinance. Prayer may then be offered, after which the Minister may declare:

Inasmuch as you have made profession of your faith and obedience, have received Christian baptism, and have by the Church Session been admitted to the Sacrament of the Lord's Supper, I declare you entitled to all the privileges of this congregation and of the full fellowship of the Church Universal.

A brief charge as to the importance of the solemn obligation assumed may be given to the new communicants and to the congregation. The whole may be concluded with a benediction.

§ 210-6. In the absence of a Minister, one of the Ruling Elders appointed by the Session may preside in the making of a profession of faith, but baptism may be performed only by an ordained Minister.

§ 210-7. When a Church member is received into the fellowship of a particular church by a certificate of dismissal, by other satisfactory testimonials, or upon reaffirmation of his original covenant obligations, the reception by the Session shall be announced to the congregation at public worship, and the person commended to them for their Christian confidence and affection.

## CHAPTER 11

*The Sacrament of the Lord's Supper*

§ 211-1. The Sacrament of the Lord's Supper may be administered only by an ordained Minister of the Word.

§ 211-2. The Sacrament of the Lord's Supper is to be celebrated frequently, but at least quarterly. The stated times are to be determined by the Session for each congregation.

§ 211-3. The Session may authorize that the Sacrament be administered in connection with the visitation of the sick of that congregation provided that it is requested by the sick person. On such an occasion at least one member of the Session, representing the congregation, shall be present in addition to the Minister;

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and a brief exposition of the Word applicable to the circumstances shall be given by the Minister so that the Sacrament may be received with understanding.

§ 211-4. Higher Church courts may appoint times for the celebration of the Lord's Supper either during their sessions or in connection with some gathering of believers which is under their control.

§ 211-5. If the people do not gather at the table, the elements are to be taken to them in their pews by Ruling Elders (whether or not in active service in the Session). In a church which lacks sufficient Ruling Elders for this purpose, Deacons (or in necessity other Church members) may be invited by the Minister and Session to serve in distributing the elements.

§ 211-6. Public notice should be given to the congregation at least one week before the celebration of this Sacrament. Either then, or on some other day prior to the administration, the people should be instructed in its nature, and urged to make due preparation for it, that all may come in a suitable manner to this holy feast.

§ 211-7. When the time for the administration of the Sacrament has come, the Minister shall show:

- (a) by reading the words of institution either from the Gospels or from I Corinthians 11, that our Lord Jesus has commanded this Sacrament to be observed in his Church, thereby showing the Lord's death till he come;
- (b) that it is for the perpetual remembrance of the sacrifice of himself in his death, for the sealing of all the benefits of his death and resurrection to all true believers, for their spiritual nourishment and growth in him, and for their further engagement in and to all duties which they owe unto him;
- (c) that it is a bond and pledge of their communion with him and with each other, as members of his body.

He shall invite to partake of the Sacrament all those who are communicants in good standing in some Christian church, who trust in the Lord Jesus Christ and repent of their sins, and who would covenant afresh to live as followers of Christ.

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He shall also warn the unprepared, the self-sufficient, the unrepentant, not to approach the holy table. It is proper also to give a special invitation to non-communicants to remain during the service that they may be instructed.

§ 211-8. The elements of bread and wine should be placed on a table and properly covered. The Ruling Elders should be together at a convenient place. The congregation should be orderly and reverently assembled. The Minister should then set the elements apart, by prayer and thanksgiving which shall include remembrance of the death and resurrection of Christ, and shall ask that the Holy Spirit sanctify the Sacrament unto the people's benefit. The bread and wine being thus set apart by prayer and thanksgiving, the Minister is to take the bread, and break it in the view of the people, saying:

Our Lord Jesus Christ, on the same night in which he was betrayed, having taken bread, and blessed and broken it, gave it to his disciples; as I, ministering in his name, give this bread unto you; saying (here the bread is to be distributed). Take, eat; this is my body, which is broken for you: this do in remembrance of me.

After having given the bread, he shall take the cup, and say:

After the same manner our Savior also took the cup, and having given thanks, as hath been done in his name, he gave it to the disciples, saying (while the Minister is repeating these words let him give the cup), This cup is the New Testament in my blood, which is shed for many, for the remission of sins: drink all ye of it.

§ 211-9. Since believers are to act personally in all their covenanting with the Lord, it is proper that a part of the time occupied in the distribution of the elements should be spent by all in communion with God, confession, thanksgiving, intercession, and in renewing the believer's personal covenant with his Lord.

§ 211-10. After all have partaken, the Minister should offer a prayer of thanksgiving. The congregation should sing a psalm or hymn, and be dismissed with some gospel benediction.

§ 211-11. A special offering for the poor, or other sacred pur-

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pose, is appropriate in connection with the occasion of the Lord's Supper, and may be made at such time as shall be ordered by the Session.

## B. Other Occasions of Worship

## CHAPTER 12

*Public Worship upon Weekdays*

§ 212-1. A regular time upon some weekday should be appointed by the Session for the gathering of the people to prayer, praise and the hearing of the Word.

§ 212-2. The exercises appropriate for such gatherings are: the singing of praises; the offering of prayers, especially specific intercessions by the church for persons known to have special need; the reading of and instruction in Holy Scripture; the consideration of aspects of the Church's witness to the Gospel, such as missions, evangelization and stewardship; and expressions of the fellowship of believers in Christ their Lord, such as common meals.

## CHAPTER 13

*Days of Fasting and of Thanksgiving*

§ 213-1. It is proper and Scriptural that the Church observe days of fasting and of thanksgiving under the urgent circumstances of God's providence.

§ 213-2. Fasting and thanksgiving may be observed by individual Christians; by families; by congregations; by a number of congregations near each other; by the congregations under the care of a Presbytery, or of a Synod; or by all the congregations of this Church.

§ 213-3. It should be left to the judgment and discretion of every Christian and family to determine when it is proper to observe a private fast or thanksgiving; and to the Sessions to determine for particular congregations; and to the Presbyteries or Synods to determine for larger districts. When it is deemed expedient that a fast or thanksgiving should be general, the call for it should



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be issued by the General Assembly. If at any time the civil power should appoint a fast or thanksgiving, it is the duty of the Ministers and people of our communion to pay all due respect to it.

§ 213-4. Public notice should be given a sufficient time before every public day of fasting or thanksgiving, that persons may so order their affairs as to allow them to attend properly to the duties of the day.

§ 213-5. There should be public worship upon all such days; and the prayers, psalms or hymns, the selections of Scripture, and sermons should all be in a special manner adapted to the occasion.

§ 213-6. On days of fasting, the Minister should point out the authority and providence calling for the observance; and he should spend more than the usual time in solemn prayer, particular confession of sin, especially of the sins of the day and place; and the whole day should be spent in prayer and meditation.

§ 213-7. On days of thanksgiving, the Minister should give information respecting the authority and providences which call for the observance; and he should spend more than the usual time in giving thanks, agreeably to the occasion, and in singing psalms or hymns of praise. On these days, the people should rejoice with holy gladness of heart; but their joy should be tempered with reverence, that they indulge in no excess or unbecoming levity.

## CHAPTER 14

*Individual and Family Worship*

§ 214-1. It is the duty of each person and of every family to worship God in private.

§ 214-2. Individual worship is plainly enjoined by our Lord. In this duty everyone, apart, should spend some time in prayer, reading the Scriptures, holy meditation, and serious self-examination. The many advantages of these duties are best known to those who faithfully engage in them.

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§ 214-3. Family worship, which should be observed daily by every family, consists in prayer, reading the Scriptures, and singing praises; or in some other form of outspoken recognition of God.

## CHAPTER 15

*Christian Marriage*

§ 215-1. Since marriage is a divine institution, established by God in creation, the Church solemnizes marriage in holy worship, with prayer and blessings, bearing witness to its nature, and also requires vows concerning their obligation to God from those who engage in it.

§ 215-2. As they are enjoined to marry in the Lord, Christians should have their marriage solemnized by a lawful Minister of the Word, ordinarily in the building set apart to the worship of God and in the presence of God's people.

§ 215-3. The intent to marry should be announced sufficiently in advance of the solemnization of the marriage. Before the marriage it is the duty of the Minister to see (1) that the parties obey the proper laws established by the civil commonwealth to regulate marriages; (2) that the parties are of such years of discretion as to be capable of making their own choice; and, if they be under age, that the consent of parents or guardians be previously obtained and certified to the Minister; (3) that the parties' understanding of and commitment to Christian marriage is such as to give promise of God's blessing upon their union; (4) that special instruction is given to prepare them for entering into their new relation in the Lord.

§ 215-4. The Minister should instruct those planning marriage in this Church's understanding of marriage as set forth in Chapter XXVI of the Confession of Faith and in this chapter of the Directory for Worship. He may counsel with them on all important aspects of marriage, especially those where problems may arise. He should assist them to lay firm foundations for the establishment of a Christian home, and should encourage them to develop the Christian graces of understanding, patience, generosity, repentance, and forgiveness as the basis of harmony within their union.

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§ 215-5. The Minister should take as a vital pastoral responsibility the task of preventing, so far as he can by wise and prayerful counsel, the hasty or ill-considered separation of any couple committed to his care. Divorce can rightly be sanctioned by the Church only where a continuation of the legal union would endanger the physical, moral or spiritual well-being of one or both of the partners or that of their children.

§ 215-6. In all cases where remarriage after divorce is sought, the Minister's decision should turn not so much on what the applicant has done as on what the person by God's grace has now become, and what, with God's help, he (or she) honestly intends and hopes to do in the future.

The Session of a church may appoint a committee to advise on such cases at the request of the Minister; and the Presbytery may appoint a similar committee to which Minister or Session may refer such cases.

§ 215-7. If the Minister is not in conscience convinced of the complete propriety of the marriage under the laws of the civil commonwealth and of Holy Scripture as interpreted in the Standards of this Church, he shall not perform the ceremony.

§ 215-8. The order for a marriage service shall include a statement of the nature of Christian marriage as set forth in Scripture, prayers for the parties and for their new estate, the undertaking of the covenant between them, a declaration that the parties have been joined in marriage, and the Minister's pronouncing the benediction of God upon their union.

Any further elements of the order shall be at the discretion of the Minister, who shall have entire responsibility for the direction of the service. Such music as accompanies the service should be to the glory of God who sanctifies marriage, to which end the use of hymns by the congregation is appropriate.

§ 215-9. The Minister shall comply with all requirements of the civil commonwealth for the proper performance and registration of the marriage. He shall also see that the church maintains an adequate record of marriages within the congregation by having notice of all such marriages included in the minutes of the church Session. He shall also keep a personal register of

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all marriages he performs, including the time, the names of the parties, and the civil authority issuing license to marry.

## CHAPTER 16

*The Funeral and the Burial of the Dead*

§ 216-1. The funeral should be a service of worship in which God's people witness to their faith in the communion of saints, the resurrection of the body, and the life everlasting; and in which also assurance of God's love and salvation in Christ is ministered especially to the bereaved.

This service should ordinarily be held in the building set apart to the worship of God, and conducted by a Minister of the Word.

§ 216-2. The exercises proper to the funeral are: the singing of appropriate psalms or hymns; the reading of appropriate passages from Holy Scripture; the exposition and application of such Scripture in a sermon if the Minister judges it proper; the offering of prayers which shall include: thanksgiving for Jesus Christ and the hope of the Gospel; intercession for the bereaved; and supplication for faith and grace on behalf of all present.

§ 216-3. The exercises proper to the burial of the dead are the committal of the body to the grave with Scripture and prayer, the service being closed with a benediction.

## PART II

*The Work of the Church*

## CHAPTER 17

*The Work of Evangelizing*

§ 217-1. Evangelization is the primary and urgent task of the Church. All mankind is to be called to believe in Christ as Savior, to repent and to obey Christ as Lord of all. Christ's claim as Savior and Lord is to be laid on every individual and on the whole of society.

§ 217-2. The Pastor and the Church Session have the respon-

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sibility for leading the Church in performing this task. This service is faithfully rendered only as the Church keeps this task as the goal of all its work, and as its members are led to witness to Christ in their personal contacts and in their family, business and social relationships.

## CHAPTER 18

*The Work of Christian Nurture*

§ 218-1. Christian nurture is the work of instructing and guiding believers and their children in Christian faith and life.

§ 218-2. The Bible is the basic textbook of the Church. Together with the Confession of Faith and the Larger and Shorter Catechisms, it shall provide the primary teaching material for the educational program. Further teaching materials in accord with these primary materials may be authorized by the General Assembly, and should be used by parents and churches.

§ 218-3. Christian nurture begins and continues in the Christian home. Here parents and children live in a continuing fellowship within which, by the aid of the Holy Spirit, the Gospel may be so presented that all those involved will respond in faith and commitment to Jesus Christ as Lord and Savior.

§ 218-4. Parents have first responsibility for Christian nurture and should take part in the formal educational program of their church.

§ 218-5. The formal educational program of a particular church is under the control of the Session (cf. FG § 15-6) and under the supervision of the Pastor (cf. FG § 10-4). All materials and activities shall be approved by the Session, and should be in harmony with the educational program approved by the General Assembly. The Session shall see that adequate buildings and other physical equipment are provided. The Session shall confirm the choice and appointment of all persons who are to serve in the educational program. The Session may employ properly qualified persons to direct the educational program. Such persons shall work under the supervision of the Pastor.

§ 218-6. The Pastor, because he is the Teaching Elder, is a

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member of such committees and councils as the Session may appoint to carry out the educational program. Persons employed by the Session to direct the educational program may be advisory members of appropriate committees and councils.

§ 218-7. Church members who give evidence of spiritual maturity, who accept the basic beliefs of our Church, and who are willing to receive training in the necessary teaching skills are to be recruited as leaders and teachers.

## CHAPTER 19

*The Work of a Member in the Church*

§ 219-1. Whereas those with a special sense of call are led of God into special fields of service, it is incumbent upon every member of the Church by virtue of his vows of Church membership to attend services of worship regularly; to give generously to the support of the Church; to participate as fully as possible in church activities; to take part in the formal educational program of the Church; to observe family prayer, daily Bible reading and grace at meals in his home; and in every way to reflect in his life his relationship to Christ as Savior and Lord.

§ 219-2. Those to whom God has given particular abilities, such as teaching, visiting or administering, should respond to needs as they arise, and should be encouraged by the Pastor and Session to do so.

## CHAPTER 20

*Stewardship of Possessions*

§ 220-1. Stewardship of possessions, as the believer's response to God for the blessing he has bestowed on his people, finds its motive in God's gift of his Son to us, and its measure in Christ's offering of his life for our redemption. It is a voluntary expression arising out of a grateful heart and a grace derived through the Holy Spirit.

Recognizing God's sovereignty over and claim upon his life, the Christian steward first offers himself and his abilities to God. He then presents his possessions as an offering for God to use both in the Church and in the world.



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## § 220-2

§ 220-2. It is the responsibility of the Pastor and other Church officers to present God's ownership as it is revealed in Holy Scripture. All believers should be encouraged to return a definite portion of their income to God. It is a particular duty of the Deacons to develop the grace of liberality in the members of the Church.

§ 220-3. The order of worship should provide an opportunity for those present to express their devotion to God through gifts for the work of his Church.

This offering shall ordinarily provide for the regular financial commitments of the congregation. However, from time to time, special causes of the Church and special needs of people provide occasions whereby believers may again recognize God's ownership of themselves and their possessions.

## CHAPTER 21

*The Daily Work of a Christian*

§ 221-1. God calls all Church members to glorify and serve him in their daily work.

§ 221-2. The choice of a life work is a decision of faith. This decision is based upon a sense of divine call, upon an appraisal of abilities and interests, upon the appropriateness of the work to serve God's purposes, and upon acceptance of God's apparent providence.

The doing of one's daily work is for the Church member obedience to God and an expression of faith in the lordship of Jesus Christ.

## CHAPTER 22

*Ministry to the Sick, the Bereaved, and Others in Special Need*

§ 222-1. As Christ visited the sick and the bereaved, fed the hungry and ministered to the poor, so he has commanded his people to share their gifts of the Spirit, their time, their possessions, and their lives with people in every state of need.

§ 222-2. The responsibility of Pastors, Ruling Elders, Deacons and members extends far beyond the limits of any particular congregation. It is their duty in the name of Christ to extend the

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church's ministry to hospitals, homes for the aged and infirm, children's homes, correctional schools, prisons and welfare institutions, and wherever, in the providence of God, his children in adversity may be found.

§ 222-3. Deacons, by the very nature of their office, are charged with responsibility for continuing works of mercy. To them particularly the church looks for leadership in its ministry of compassion as it seeks to provide comfort, hope and healing to the lonely, the troubled, the sick and the poor.

§ 222-4. Believers should minister to the physical and spiritual needs of any who may be sick, should ask in faith the blessing of God upon the means used for their relief and healing, remembering that the Holy Spirit works healing where and when he wills.

§ 222-5. It is the duty of the sick and their families to notify the church of their condition. It is a special duty of the Pastor and Ruling Elders to visit the sick and minister specifically to their spiritual welfare, mindful that the Holy Spirit uses the crises of human life to manifest the grace of God.

§ 222-6. When a death occurs, the family should inform the Pastor and he should notify members of the Session and of the congregation so that the needs of the bereaved, both spiritual and material, may be ministered to by the people of God. The church's ministry should include prayer by the Ruling Elders with and for the family, and the presence of church officers and members at the funeral.

## CHAPTER 23

*The Christian's Life in the World*

§ 223-1. Christ has established his Church in the world that he might have a people to serve him, and that they should be the instruments of his reconciling ministry in the world.

§ 223-2. The Christian is sent by his Lord into this world, as the Father sent the Son into this world. He is to live in this world as his Lord lived in the world; love it because God loves it; serve it because his Lord came to serve it and to redeem it.

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§ 223-3. The primary witness of the Church to her King and Head is made as Christians, obedient to their Lord's commands, love and serve their neighbors for Christ's sake.

The Church witnesses by word and action to the lordship of Christ over human society and to the love, justice and righteousness of God over against the evils of the world; praying "... Thy kingdom come. Thy will be done in earth, as it is in heaven."

## CHAPTER 24

*Church Vocations Not Requiring Ordination*

§ 224-1. In addition to those ordained to office, God calls other Church members, both men and women, to perform special professional services in the Church. Among these are Directors of Christian Education, Directors of Music, and other persons serving under agencies of the Church not as Ministers but as professionally trained persons, such as physicians, engineers, educators, business administrators, and the like.

§ 224-2. Any person seeking such service in a Church vocation should be received under the care of the Session of the particular church to which he belongs, that there may be a clear witness to God's calling in Church vocations, and that he may have the Church's guidance in his preparation for service.

§ 224-3. The member feeling called to such a Church vocation should make that fact known to his Session and request to be received under its care. Ordinarily a period of at least six months should elapse between the request and the action of the Session receiving the person under its care. During this time the Session should assure itself regarding his sincerity of purpose in undertaking a Church vocation, and regarding his promise of usefulness in the particular vocation.

§ 224-4. Every person received under a Session's care in preparation for a Church vocation should answer affirmatively the following or like questions:

- (1) Do you trust in Jesus Christ as your Savior and commit yourself to his lordship over your whole life?
- (2) Do you sincerely believe yourself called by God to serve

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Jesus Christ in the Church vocation of (here insert the description of the particular vocation)?

(3) Do you now submit yourself to the guidance of the Session in your further training for service, and promise to devote yourself fully to this preparation?

§ 224-5. Any person seeking a Church vocation in the world mission of the Church shall apply to the Board of World Missions of this Church for reception under its care as a candidate for mission service. He shall present a recommendation from the Session under whose care he has been and shall fulfill whatever qualifications are required by the Board of World Missions. Upon his reception as a candidate for world mission service, the Session's responsibility for guiding his preparation shall end.

§ 224-6. When the preparation of a person seeking a Church vocation is completed, he should be solemnly commissioned to the specific task by the Church, acting through the appropriate court or agency. In the case of a Director of Christian Education, the commissioning agent is the court of the Church under whose authority the director shall work. In the case of a candidate for world mission service, the commissioning agent of the Church is the Board of World Missions.

Before commissioning any person in a Church vocation, the commissioning agent of the Church shall examine the person carefully to be assured of the person's sense of call to the vocation and of his competence for such work. Such commissioning shall be done only by the Church court or agency offering the person immediate employment in the Church vocation.

§ 224-7. The form of commissioning service may be that suggested in the Book of Common Worship or some like form prepared by the commissioning agency. Every such form shall require the person to affirm: faith in Jesus Christ, belief in the Scriptures as the Word of God, sincere adoption of the Confession of Faith of this Church as setting forth the system of doctrine taught in Holy Scripture, obedience to the government and discipline of this Church, awareness that his purpose in service is the glory of God. The person shall also promise faithfulness in the performance of his duties and submission to the proper control of the court or agency which may employ him.

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**EXHIBIT B****A RESOLUTION**

WHEREAS: The Congregation of the Vineville Presbyterian Church, Inc. desires to be at peace and to proclaim the Good News of Jesus Christ, adhering closely to the Bible as the infallible Word of God, and to the doctrines originally stated in the Westminster Confession of Faith, and

WHEREAS: The Congregation of the Vineville Presbyterian Church, Inc. desires to separate with our property, real, chattels, and intangibles from Augusta-Macon Presbytery and the Presbyterian Church in the United States so as to become and constitute itself an independent church, and

WHEREAS: Such exercise of freedom is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America,

NOW THEREFORE, BE IT RESOLVED that the Vineville Presbyterian Church Inc., does now declare itself to be an independent and self-governing church.

BE IT FURTHER RESOLVED that any and all connections, control, jurisdiction, and/or oversight of said Augusta-Macon Presbytery and any other judicatory or commission of the Presbyterian Church in the United States with the Vineville Presbyterian Church, Inc., be and the same hereby are severed and dissolved.

AND BE IT FURTHER RESOLVED that all matters concerning the Vineville Presbyterian Church, Inc., both spiritual and secular, shall be determined by the local Church Congregation and shall be carried out through its duly elected officers.

AND BE IT FURTHER RESOLVED that adherence to the Westminster Confession of Faith and the Larger and Shorter Catechisms is affirmed.

AND BE IT FURTHER RESOLVED that permission be granted to the Session of the Vineville Presbyterian Church, Inc. to join with other sessions and congregations that have recently separated from the old Augusta-Macon Presbytery, in the formation of a new provisional presbytery adhering to the Westminster Confession of Faith, the Larger and Shorter Catechisms, and the Book of Church Order, awaiting the formation of a new Presbyterian denomination in the fall of 1973.

ADOPTED AT A CONGREGATIONAL  
MEETING HELD ON

CLERK

MODERATOR

## EXHIBIT "C"

MINUTES FOR CONGREGATIONAL  
MEETING HELD MAY 27, 1973 AT  
TWELVE, NOON IN VINEVILLE PRES-  
BYTERIAN CHURCH

This meeting, having previously been called for by the Session, was opened with prayer by the Moderator. Explanation of the call was made by the Moderator. The Moderator explained that the meeting was called to determine voting procedure for the Congregational Meeting to be held May 27.

First order of business was election of a Clerk. Clerk of Session was suggested, and there being no dissenting motion; Clerk of Session was named to act as Clerk of the Congregational Meeting.

The question was put by the Moderator relative to a quorum. Ten per cent of the Congregation constitutes a quorum, and it was obvious that there was in excess of two hundred members present—the quorum of this Congregation being about 53, there obviously was a quorum present. Explanation was made by the Moderator regarding active membership as being a requirement for voting, and reference was made to the *Book of Church Order* as the authority.

Moderator reviewed the procedure for voting, informing the Congregation of the Session's recommendation for a standing vote. The Moderator also advised that a minority of the Session had requested a secret ballot. Motion was made by Clerk to adopt the Session's recommendation of a standing vote. This Motion was seconded.

Member, Dan Dunwody, spoke against the standing vote.

Member, Charles Wolf, spoke in favor of the standing vote. Question was called for; and unanimous vote approved proceeding with this, as to the method of voting. Voting at this point was by upraised hands; and this passed by a vote of 179 *for* the motion, and 98 *against* the motion to vote on the Resolution by standing.

The Resolution (see copy attached to Minutes) was read by the Clerk. Motion was then made by Clerk to adopt the Resolution as submitted by the Session. This motion was seconded.

Comments were made by various members of the Congregation, after which the question was called. By unanimous voice vote, the question was put to the Congregation. The Motion passed by 165 *for*, to 94 *against*, according to the count. (See tally sheets attached.)

A question was raised from the floor as to what percentage of a majority was required to pass the Resolution. Moderator advised that a simple majority was sufficient. Rev. Joseph Eckstine requested recognition, and was given authority to speak. Mr. Eckstine stated that Vineville Church did not come into the Presbyterian Church by a majority vote, and that it would not find it so easy to withdraw by a majority vote. The gist of his remark was that a simple majority was not sufficient to withdraw the Church from the Presbyterian Church, U.S.

The above figures reflect more than a simple majority, showing sixty-four per cent (64%) of those present as voting in favor of the Motion, and thirty-six per cent (36%) against. The Church reported as separating from Presbyterian Church of the United States.

A plea was made by the Moderator for "drawing together in a stronger unity than ever before". Motion to adjourn was seconded and passed. Meeting adjourned with prayer by the Moderator.

F. L. FLEMING

*Clerk*

# EXHIBIT D

May 27, 1973

Rev. Robt. D. Earnest  
Presbytery of Augusta-Macon  
2110 Ingleside Ave.  
Macon, Georgia 31204

Dear Sir:

On May 27, 1973, the Congregation of the Vineville Presbyterian Church by a standing vote of 165 for, and 94 against, severed its relationship with the Presbytery of Augusta-Macon and with the Presbyterian Church in the United States. A copy of the Resolution adopted by the Congregation is enclosed.

The reasons for the action of the Congregation are well known to the Presbytery and to the denomination. The General Assembly of the Presbyterian Church in the United States has demonstrated repeatedly its arbitrary disregard of its covenant to preserve the purity and peace of the Church.

We trust that our relations with you will continue to be cordial. It was with deep conviction, but also with regret, that we felt constrained to take this action. We ask you to pray for us, and we promise that we shall continue to pray for you.

Very truly yours,

*Clerk of Session*



## EXHIBIT E

May 27, 1973

Rev. Robt. D. Earnest  
 Presbytery of Augusta-Macon  
 2110 Ingleside Ave.  
 Macon, Georgia 31204

Dear Sir:

This will notify you that I have relinquished my membership in the Presbytery of Augusta-Macon, and, of this date, May 27, 1973, have been taken under the jurisdiction and oversight of the Session of the Vineville Presbyterian Church.

Very sincerely yours,

HENRY M. HOPE, JR.  
*Pastor*

## EXHIBIT F

## AUGUSTA-MACON ADMINISTRATIVE COMMISSION

The following are the actions of the Commission:

1. The members of the congregation of the Vineville Presbyterian Church who hold to their original vows and have not renounced their affiliation with the Presbyterian Church in the United States are recognized and are hereby declared to be the true congregation of Vineville Presbyterian Church.

2. In light of the declarations by the Rev. Mr. Henry Hope and the officers of the Vineville Presbyterian Church who agreed to the statement of withdrawal on May 27, 1973, we hereby record their irregularity and withdraw from them all authority to exercise office derived from the Presbyterian Church in the United States (BCO 111-3).

3. We declare the Session of the Vineville Presbyterian Church unable to exercise authority and assume original jurisdiction over the Vineville Presbyterian Church for the purpose of organizing a Session of the congregation and for providing pastoral care for the congregation. (BCO 16-7 (2)).

We recommend the adoption of the guidelines used by this Commission by Presbytery and communicated to our churches for their instruction and guidance.

1. That Presbytery dismiss or dissolve any congregation from the Presbytery which requests to be so by at least a  $\frac{3}{4}$  majority vote of that congregation in a duly called congregational meeting.

2. For those who hold irreconcilable differences that a Commission of Presbytery give to them opportunity to make known their differences and that

this Commission thereby, if they so desire, dismiss or dissolve the relationship of those individuals and declare that the true congregation is those who wish to remain loyal to the Presbyterian Church in the United States.

3. For those with irreconcilable differences who will not recognize the authority of Presbytery be declared to have withdrawn from the Presbyterian Church in the United States and thereby to have forfeited all ecclesiastical privileges of the PCUS and all rights to the property of the congregation.

Respectfully submitted

ROBERT HUNT, CHM.  
MARVIN RANDOLPH, SEC.  
GEORGE GANEY  
PHILIP BRINSON  
PHILIP JORDAN  
HORACE HUTTO

**ANSWER, FILED 5/17/76**

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

R. W. JONES, SR.,  
ROBERT E. LUCAS  
and RALPH MIGNEREY,

*Plaintiffs*

*v.*

Civil Action  
No. 45787 D-2

CHARLES T. WOLF,  
F. LAMAR FLEMING  
and HENRY M. HOPE, JR.,

*Defendants*

**ANSWER OF DEFENDANTS**

Come now CHARLES T. WOLF, F. LAMAR FLEMING and HENRY M. HOPE, JR., defendants herein, and for answer to the complaint of the plaintiffs respectfully show as follows:

**FIRST DEFENSE**

Plaintiffs' complaint fails to state a claim against these defendants, or any of them, upon which relief can be granted.

**SECOND DEFENSE**

Specifically answering the allegations of the complaint, these defendants say as follows:

1.

Defendants admit paragraph 1.

2.

Defendants admit paragraph 2.

3.

Answering paragraph 3 of the complaint:

(a) Defendants deny that the Presbyterian Church in the United States is a Hierarchical Church.

(b) Defendants admit that the Presbyterian Church in the United States is generally recognized by legal commentators and in court opinions as having a "connectional form of government".

(c) Defendants say on information and belief that plaintiffs and the class they represent are not members of the Presbyterian Church in the United States in that said denomination does not have individual members.

4.

Answering paragraph 4 of the complaint:

(a) Defendants admit that the Vineville Presbyterian Church located at 2193 Vineville Avenue, Macon, Georgia, whose membership is composed of defendants and the class they represent, was a local unit of the Presbyterian Church in the United States until May 27, 1973.

(b) Defendants deny the remaining averments of paragraph 4.

5.

Answering paragraph 5 of the complaint:

(a) Defendants admit that plaintiffs and the class they represent are members of a group which calls itself

"The Vineville Presbyterian Church, a local unit of the Presbyterian Church in the United States", but deny that plaintiffs or the aforesaid group have any rights whatsoever in the property which is the subject matter of this action.

(b) Defendants admit the remaining averments of paragraph 5.

6.

Answering paragraph 6 of the complaint:

(a) Defendants deny that they and the class they represent were formerly members of the Presbyterian Church in the United States, and show that they and the class they represent were and are presently members of the Vineville Presbyterian Church.

(b) Defendants admit that they will fairly insure adequate representation of all members of the class of persons composed of the membership of the Vineville Presbyterian Church.

(c) Defendants deny the remaining averments of paragraph 6.

7.

Answering paragraph 7 of the complaint:

(a) Defendants show that the structure of the Presbyterian Church in the United States is set forth in the Book of Church Order attached to the complaint as Exhibit "A", and that said document speaks for itself.

(b) Defendants deny that a Presbytery, a Synod or the General Assembly has any authority whatsoever over the property of a local church unit.



8.

Answering paragraph 8 of the complaint:

(a) Defendants deny that the resolution referred to in paragraph 8 purported to do anything, and show that said resolution in fact severed the connectional relationship existing between the Vineville Presbyterian Church and the Augusta-Macon Presbytery, and through that body the Presbyterian Church in the United States.

(b) Defendants admit the remaining averments of paragraph 8.

9.

Answering paragraph 9 of the complaint:

(a) Defendants admit that Exhibits "D" and "E" are true and correct copies of the original documents.

(b) Defendants deny the remaining averments of paragraph 9.

10.

Answering paragraph 10 of the complaint:

(a) Defendants admit that after severing the connectional relationship with the Augusta-Macon Presbytery and through that body the Presbyterian Church in the United States, the Vineville Presbyterian Church by unanimous vote of defendants and the class they represent united with the Central Georgia Presbytery of the Presbyterian Church in America.

(b) Defendants deny that the uniting of the Vineville Presbyterian Church with the Central Georgia Presbytery is germane to any issue whatsoever in this case.

11.

The allegations of paragraph 11 of the complaint require no answer, in that the contents of Exhibit "A" speak for themselves.

12.

Answering paragraph 12 of the complaint:

(a) The allegations of paragraph 12 regarding Exhibit "F" require no answer in that the contents of Exhibit "F" speak for themselves.

(b) Defendants are without knowledge or information sufficient to form a belief as to what authority the purported action contained in Exhibit "F" was taken, or whether it can be deemed to be regularly taken.

(c) Defendants show that by whatever authority Exhibit "F" was issued, it has no effect whatsoever with regard to the property of the Vineville Presbyterian Church located at 2193 Vineville Avenue, Macon, Georgia.

(d) Defendants specifically deny that any action taken with regard to Exhibit "F" is binding upon these defendants or the class which they are alleged to represent.

13.

Answering paragraph 13 of the complaint:

(a) Defendants admit that on February 1, 1974 after the Vineville Presbyterian Church severed its relationship with the Augusta-Macon Presbytery, an instrument was filed in the office of the Clerk of the Superior Court of Bibb County which names plaintiffs Jones, Lucas and Mignery as Trustees of Vineville Presbyterian Church.

(b) Defendants deny that said instrument is of any force and effect whatsoever and show that said document is illegal, void and a nullity, and should be so decreed by this Honorable Court.

(c) Defendants show that A. E. Barnes, III, Hal Bell, and R. C. Ham are the duly elected Trustees of the Vineville Presbyterian Church.

## 14.

Answering paragraph 14 of the complaint:

(a) Defendants admit that they and the class they represent have been in possession, dominion and control over the church property of the Vineville Presbyterian Church located at 2193 Vineville Avenue, Macon, Georgia, since 1908.

(b) Defendants show that the allegations of paragraph 14 referring to the tenets and doctrines of the Presbyterian Church in America are immaterial to any issue in this case.

(c) Defendants deny the remaining averments of paragraph 14.

## 15.

Answering paragraph 15 of the complaint:

(a) Defendants admit that plaintiffs and the class they represent have been prohibited and excluded from utilizing the property of the Vineville Presbyterian Church as a local unit of the Presbyterian Church in the United States.

(b) Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 15.

## 16.

Defendants admit paragraph 16.

## 17.

The allegations of paragraph 17 of the complaint require no answer in that any judgment by the United States District Court for the Middle District of Georgia speaks for itself.

## 18.

Answering paragraph 18 of the complaint:

(a) Defendants admit the allegations of paragraph 18 specify the relief plaintiffs are seeking in this action.

(b) Defendants deny that plaintiffs are entitled to any such relief whatsoever.

## 19.

Except as herein specifically admitted, or neither admitted nor denied for want of sufficient information, the allegations of the complaint are denied.

## 20.

Defendants deny that plaintiffs are entitled to any relief whatever.

## THIRD DEFENSE

The complaint in the present case seeks to have this Court adjudicate matters dependent upon the interpretation of ecclesiastical law, and civil courts will not take cognizance of such a claim.

## FOURTH DEFENSE

Title to that part of the property referred to in the complaint upon which the church sanctuary is located is in a corporation known as Vineville Presbyterian Church, and the named defendants are not officers or trustees of said corporation, so that a decree entered against these defendants would be fruitless.

## FIFTH DEFENSE

Defendants show that Paragraph 6-1 of the Book of Church Order of the Presbyterian Church in the United States, Exhibit "A" to plaintiffs' complaint, provides in part that, with respect to an unincorporated church, "in the fulfillment of their duty such trustees shall be subject always to the authority, and shall act solely under the instructions of the congregation which they serve as trustees"; and if the Book of Church Order, Exhibit "A", has any efficacy in this matter, the complaint shows on its face that if the Church is not incorporated, the defendants and their associates are entitled to possession and control of said Church edifice and additional real estate of Vineville Presbyterian Church, to the exclusion of plaintiffs.

## SIXTH DEFENSE

Defendants further show that Paragraph 6-2 of the Book of Church Order of the Presbyterian Church in the United States, Exhibit "A" to plaintiffs' complaint, provides in part, with respect to an incorporated church, that "in buying, selling and mortgaging real estate, such officers (officers of the corporation) shall act solely under the authority of the corporation granted in a duly constituted meeting of the corporation"; and if the Book of Church Order, Exhibit "A" to plaintiffs' complaint, has any efficacy in this matter, the complaint shows on its face that if the Church is incorporated, the defendants and

their associates are entitled to possession and control of said Church edifice and additional real estate of Vineville Presbyterian Church, to the exclusion of plaintiffs.

## SEVENTH DEFENSE

## 1.

Defendants further show that the title to the property involved in this proceeding, which plaintiffs contend defendants are illegally holding and enjoying, to the exclusion of plaintiffs, was acquired by instruments of conveyance hereto attached, marked Exhibits "A", "B", "B-1", "C", "D", "E", "F", "G" and "H".

## 2.

Defendants further show that the Vineville Presbyterian Church is an incorporated body, having been incorporated pursuant to charter granted by the Superior Court of Bibb County, Georgia, a copy of said charter being hereto attached marked Exhibit "I", and revived and renewed according to Exhibit "J" hereto attached.

## 3.

Since 1908 the congregation of the Vineville Presbyterian Church has dealt with its property to the exclusion of the Augusta-Macon Presbytery and any other person or body connected with the Presbyterian Church in the United States, as indicated by the deeds to secure debt hereto attached as Exhibits "K", "L", "M", "N", "O" and "P".

## 4.

Defendants show, by virtue of the foregoing conveyances and charter, that plaintiffs' complaint shows on its face that the action of the defendants was legal and



valid, and that defendants and their associates are entitled to have, hold, possess and enjoy said property, which is the subject matter of this litigation, as the property of and in the name of "Vineville Presbyterian Church" free from any claims of or interference by plaintiffs and the class they represent.

WHEREFORE, defendants, having fully answered, pray that the prayers of plaintiffs' complaint be denied; that the instrument referred to in paragraph 13 above be declared null, void and of no force and effect, and for such other relief as the Court may deem proper in the premises.

Of Counsel: E. S. SELL, JR.  
E. S. Sell, Jr.

SELL, COMER & POPPER  
P.O. Box 1014  
Macon, Georgia 31202

Of Counsel: WALLACE MILLER, JR.  
Wallace Miller, Jr.

JONES, CORK, MILLER & BENTON  
500 First National Bank Bldg.  
Macon, Georgia 31201

W. WARREN PLOWDEN, JR.  
W. Warren Plowden, Jr.

*Attorneys for Defendants*

# EXHIBIT "A"

STATE OF GEORGIA, HANCOCK COUNTY:—

THIS INDENTURE, Made the 15th day of July in the year of our Lord One Thousand Nine Hundred and Eight between Richard H. Moore and John L. Culver of the County of Hancock and State of Georgia of the first part and T. S. Lowry and G. T. Kinnett, as Trustees of the Vineville Presbyterian Church of the County of Bibb and State of Georgia of the Second part,

WITNESSETH, That the said parties of the first part for and in consideration of the sum of Three Thousand Five Hundred Dollars in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, sold, aliened, conveyed and confirmed and by these presents do grant, bargain, sell, alien, convey and confirm unto the said parties of the second part their successors and assigns all the following described property to-wit: That lot or parcel of land situate, lying and being in the Vineville District of Bibb County, beginning at a point where Culver Street intersects Vineville Avenue and running along the East side of said Culver Street a distance of 210 feet, more or less, to an alley thence along said alley a distance of 100 feet thence at right angles to said alley along a line parallel to Culver Street a distance of 210 feet, more or less to Vineville Avenue, thence along said Vineville Avenue a distance of 100 feet to the point of beginning said lot being a part of the land which was conveyed to Richard H. Moore and John L. Culver by J. A. Moore by deed dated January 16th, 1899, and recorded in Book 96 folio 665 in the office of the Clerk of the Superior Court in Bibb County.

TO HAVE AND TO HOLD the said granted and described property with all and singular the rights, members and appurtenances thereunto appertaining, to the said party

of the second part their successors and assigns, *for the only proper use, benefit and behoof of the said Vineville Presbyterian Church in Fee Simple*; and the said parties of the first part the said bargained property above described unto the said party of the second part, their successors and assigns, against the said parties of the first part, their heirs, executors, administrators or assigns and against all and every other person or persons, shall and will and do hereby warrant and forever defend by virtue of these presents.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands, affixed their seals and delivered these presents the day and year first above written.

Signed, sealed and delivered in the presence of us, the day and year above written,

L. S. CONNELL,  
J. D. BURNETT

N.P. Hancock Co. Ga.  
(SEAL)

RICHARD H. MOORE,  
(SEAL)

JNO. L. CULVER,  
(SEAL)

Recorded July 24th, 1905.

## EXHIBIT "B"

### STATE OF GEORGIA, BIBB COUNTY

THIS INDENTURE, Made this 19th day of June in the Year of Our Lord, One Thousand Nine Hundred and Fifteen between T. S. Lowry and G. T. Kinnett, of the County of Bibb, parties of the first part, and Vineville Presbyterian Church of the County of Bibb party of the second part:

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of Five (\$5.00) Dollars, cash in hand paid, the receipt of which is hereby acknowledged, have bargained and sold, and do by these presents remise, release, and forever quit-claim to the said party of the second part, its successors and assigns, all the right, title, interest, claim or demand, the said part of the first part have or may have had in and to

That lot or parcel of land situate, lying and being in the Vineville District of Bibb County, Georgia, beginning at a point where Culver Street and Vineville Avenue intersect, and running along East side of Culver Street a distance of 210 feet, more or less, to an alley: thence along this alley a distance of 100 feet: thence at right angles to said alley along a line parallel to Culver Street a distance of 210 feet, more or less to Vineville Avenue: thence along said Vineville Avenue a distance of 100 feet to point of beginning: said lot being a part of the land which was conveyed to Richard H. Moore and John T. Culver by J. O. Moore by deed dated January 16, 1899 and recorded in Book 96, folio 663, Clerk's Office, Superior Court of Bibb County.

containing        acres, more or less, with all the rights, members and appurtenances to said lot of land in anywise appertaining or belonging.

TO HAVE AND TO HOLD the said lot of land to the said party of the second part so that neither the said parties of the first part nor their heirs, nor any other person or persons claiming under them shall at any time, by any ways or means, have, claim, or demand, any right or title to the aforesaid lot of land or its appurtenances, or any right thereof.

IN TESTIMONY WHEREOF, the said parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

/s/ T. S. LOWRY

(SEAL)

/s/ G. T. KINNETT

(SEAL)

Signed, Sealed and Delivered  
in the presence of:

/s/ ROLAND T. MAHONE, *Notary Public*, Bibb  
Co. Ga. Com. Ex. 3/13/16

/s/ BE. E. WILLINGHAM, JR.  
June 22, 1915

# EXHIBIT C

STATE OF GEORGIA  
BIBB COUNTY

THIS INDENTURE, made this 1st day of June in the year of our Lord One Thousand Nine Hundred and Fifty-six between A. E. Barnes, III of the State of Georgia and County of Bibb party of the first part and HERBERT SMART, ROBERT E. LUCAS & A. EMMETT BARNES, III, as Trustees of Vineville Presbyterian Church and their successors in office of the State of GEORGIA and County of BIBB party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of (\$1,000.00) ONE THOUSAND DOLLARS AND OTHER VALUABLE CONSIDERATIONS dollars in hand, paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has hereby granted, bargained, sold and conveyed, and by the presents does grant, bargain, sell and convey unto the said parties of the second part their heirs, successors, legal representatives, and assigns, all that tract or parcel of land lying and being in All that tract or parcel of land situate lying and being in the Vineville District of Macon, Bibb County, Georgia, and being more fully described as follows: Commencing at a point 222 feet from the northeast corner of Vineville and Culver Street and running thence northward along the east side of Culver Street 70 feet; thence eastward at right angles 225½ feet; thence at right angles toward Vineville Avenue 70 feet to a 12 foot alley; thence westward along said alley 213 feet to the starting point; and being the property conveyed to Mrs. Corinne E. Baynard by deed recorded in the Office of the Bibb Superior Court in Book 204, Folio 116 on March 5, 1917, and being the same property conveyed by Mrs. Corinne E. Baynard to Grantor herein.



As a part of the consideration above expressed, Grantees herein assume and agree to pay a deed with power of sale on the above-described property given by Grantor herein to Mrs. Corinne E. Baynard for the principal sum of \$8,000.00.

GEORGIA, Bibb County  
Clerk's Office Superior  
Court

Filed for Record June 1,  
1956 at 12:30 o'clock P.M.

Recorded June 2, 1956

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being; belonging or in any wise appertaining, to the only proper use, benefit and behoof of Herbert Smart, Robert E. Lucas & A. Emmett Barnes, III, as Trustees of Vineville Presbyterian Church said parties of the second part, their heirs, successors and assigns, IN FEE SIMPLE.

And the said party of the first part, for his heirs, executors and administrators will warrant and forever defend the right and title to the above described property unto the said parties of the second part, their heirs, successors, legal representatives and assigns, against the lawful claims of all persons whomever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand affixed his seal and delivered these presents, the day and year above written.

Signed, sealed and delivered in the presence of:

A.E. BARNES III (SEAL)

WADE P. HEUIE, JR. (SEAL)

ANNIE MOZELLE S. WARREN (SEAL)

Notary Public, Bibb Co., Ga.

My Commission Expires June 21, 1958

## EXHIBIT D

STATE OF NEW YORK  
COUNTY OF ERIE

THIS INDENTURE, made and entered into this the 30th day of December, in the year of our Lord, One Thousand Nine Hundred Sixty, between O. J. BATEMAN, JR. of the State of New York and County of Erie, party of the first part, and EMMETT BARNES, III, R. E. LUCAS, and HERBERT SMART, all as Trustees for VINEVILLE PRESBYTERIAN CHURCH, and their successors in office as such trustees for said Church, of Bibb County, Georgia, parties of the second part.

## WITNESSETH

That the said party of the first part, for and in consideration of the sum of One Hundred Dollars and other good and valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said parties of the second part as the present Trustees for Vineville Presbyterian Church and their successors in office as such trustees and their assigns, all the following described property:

All that tract or parcel of land situate, lying and being in the Vineville District of Bibb County, Georgia, in the City of Macon, fronting 81 feet on Vineville Avenue and extending back to a 12-foot alley in the rear, said parcel of land being more particularly described as follows: Beginning where the western property line of the lot now or formerly owned by E. S. Taylor (formerly

Hopson) intersects Vineville Avenue, and extending thence in a westerly direction along Vineville Avenue a distance of 81 feet; thence in a northerly direction a distance of 239.9 feet to a 12-foot alley; thence in an Easterly direction along the line of said alley a distance of 112.2 feet, thence in a southerly direction along the line of the property now or formerly belonging to E.S. Taylor a distance of 264 feet to the point of beginning on Vineville Avenue. Said parcel of land being shown on a plat of a subdivision of the Culver Property in Vineville made by H.D. Cutter, C.E. and of record in Book 130, page 217, to which plat reference is made in aid of this description.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in any wise appertaining, to the only proper use, benefit and behoof of the said parties of the second part, and their successors in office as such trustees for Vineville Presbyterian Church and assigns IN FEE SIMPLE.

The above named Trustes, and their successors in office as such trustees for Vineville Presbyterian Church are hereby granted the specific power and authority to sell and convey or mortgage or convey the title thereto as security for any loan that may be made to said church, and to do all acts and things incident thereto, any part or all of the real estate herein described, by complying with the rules and regulations of the Church only. No authority shall be required from any court or the Judge thereof to do any of the acts herein set forth.

And the siad party of the first part, for himself and his heirs, successors and assigns and administrators will warrant an forever defend the right and title to all the above described property unto the said parites of the

second part, their successors in office and trustees, legal representatives and assigns against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand, affixed his seal and delivered these presents the date and year first above written.

O. J. BATEMAN, JR.

.....(SEAL)

Signed, sealed and delivered in  
the presence of

ANNETTE J. STEVENS

ANN P. KEANE

Notary Public, Erie County, New York

**EXHIBIT E**

STATE OF GEORGIA  
COUNTY OF BIBB

THIS INDENTURE, Made and entered into this the 30th day of December, in the year of our Lord, One Thousand Nine Hundred Sixty, between WARREN BATEMAN of Fulton County, Georgia, CLIFFORD HARRIS BATEMAN of Peach County, Georgia, LEOLA DUMAS of Bibb County, Georgia, D.C. BATEMAN of Bibb County, Georgia OLIVER C. BATEMAN of Orange County, Florida, parties of the first part, and EMMETT BARNES III, R.E. LUCAS and HERBERT SMART, all as Trustees for VINEVILLE PRESBYTERIAN CHURCH, and their successors in office as such trustees for said Church, of Bibb County, Georgia, parties of the second part.

**WITNESSETH**

That the said parties of the first part, for and in consideration of the sum of One Hundred Dollars and other good and valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said parties of the second part as the present Trustees for Vineville Presbyterian Church and their successors in office as such trustees and their assigns, all the following described property:

All that tract or parcel of land situate, lying and being in the Vineville District of Bibb County, Georgia, in the City of Macon, fronting 81 feet on Vineville Avenue and extending back to a 12-foot alley in the rear, said parcel of land being more particularly described as follows: Beginning where the western property line of the lot

now or formerly owned by E. S. Taylor (formerly Hopson) intersects Vineville Avenue, and extending thence in a westerly direction along Vineville Avenue a distance of 81 feet; thence in a northerly direction a distance of 239.9 feet to a 12-foot alley; thence in an easterly direction along the line of said alley a distance of 112.2 feet; thence in a southerly direction along the line of the property now or formerly belonging to E. S. Taylor a distance of 26 feet to the point of beginning on Vineville Avenue. Said parcel of land being shown on a plot of a subdivision of the Culver Property in Vineville made by H. D. Cutter, C. E. and of record in Book 130, page 817, to which plat reference is made in aid of this description.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in any wise appertaining, to the only proper use, benefit and behoof of the said parties of the second part, and their successors in office as such trustees for Vineville Presbyterian Church and Assigns in FEE SIMPLE.

The above named Trustees, and their successors in office as such Trustees for Vineville Presbyterian Church are hereby granted the specific power and authority to sell and convey or mortgage or convey the title thereto as security for any loan that may be made to said church, and to do all acts and things incident thereto, any part or all of the real estate herein described, by complying with the rules and regulations of the Church only. No authority shall be required from any court or the Judge thereof to do any of the acts herein set forth.

And the said parties of the first part, for themselves and their heirs, executors and administrators will warrant and forever defend the right and title to the above



described property unto the said parties of the second part, their successors in office as Trustees, legal representatives and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands, affixed their seals and delivered these presents the date and year first above written.

MOULTRIE WARREN BATEMAN  
.....(SEAL)  
Warren Bateman

Signed, sealed and delivered by  
Warren Bateman in the presence  
of:

R. L. MURDOCK  
.....

JOE B. SULLIVAN J. P.  
.....  
Notary Public

CLIFFORD HARRIS BATEMAN  
.....(SEAL)  
Clifford Harris Bateman

Signed, sealed and delivered by  
Clifford Harris Bateman in the  
presence of

R. L. MURDOCK  
.....

JOE B. SULLIVAN J.P.  
.....  
Notary Public

LEOLA DUMAS  
.....(SEAL)  
Leola Dumas

Signed, sealed and delivered by  
Leola Dumas in the presence of

EDNA U. BATEMAN  
.....

HAROLD ANDERSON  
.....  
Notary Public, Bibb County,  
Georgia

NOTARY PUBLIC  
MY COMMISSION EXPIRES FEBRUARY 27, 1981

D. C. BATEMAN  
.....(SEAL)  
D. C. Bateman

Signed, sealed and delivered by D.  
C. Bateman in the presence of

EDNA U. BATEMAN  
.....

HAROLD ANDERSON  
.....  
Notary Public, Bibb County  
Georgia

NOTARY PUBLIC  
MY COMMISSION EXPIRES FEBRUARY 27, 1981

OLIVER C. BATEMAN  
.....(SEAL)  
Oliver C. Bateman

Signed, sealed and delivered by  
Oliver C. Bateman in the presence  
of

EDNA U. BATEMAN

HAROLD ANDERSON

Notary Public, Bibb County,  
Georgia

NOTARY PUBLIC  
MY COMMISSION EXPIRES FEBRUARY 27, 1961

GEORGIA, Bibb County, Clerk's Of-  
fice Superior Court  
Filed for Record Jan 4, 1961 at 3  
o'clock P.M.  
Recorded Jan 5, 1961 BOOK  
PAGES

.....Clerk

# EXHIBIT F

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

THIS INDENTURE, Made and entered into this the 30th day of December, in the year of our Lord, One Thousand Nine Hundred Sixty, between MRS. ELIZABETH BATEMAN CHAMBERS of Hillsborough County, Florida, party of the first part, and EMMETT BARNES, III, R. E. LUCAS and HERBERT SMART, all as Trustees for Vineville Presbyterian Church, and their successors in office as such trustees for said Church, of Bibb County, Georgia, parties of the second part.

## WITNESSETH

That the said party of the first part, for and in consideration of the sum of One Hundred Dollars and other good and valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said parties of the second part as the present Trustees for Vineville Presbyterian Church and their successors in office as such trustees and their assigns, all the following described property:

All that tract or parcel of land situate, lying and being in the Vineville District of Bibb County, Georgia, in the City of Macon, fronting 81 feet on Vineville Avenue and extending back to a 12-foot alley in the rear, said parcel of land being more particularly described as follows: Beginning where the western property line of the lot now or formerly owned by E. S. Taylor (formerly

Hopson) intersects Vineville Avenue, and extending thence in a westerly direction along Vineville Avenue a distance of 81 feet; thence in a northerly direction a distance of 239.9 feet to a 12-foot alley; thence in an easterly direction along the line of said alley a distance of 112.2 feet; thence in a southerly direction along the line of the property now or formerly belonging to E.S. Taylor a distance of 264 feet to the point of beginning on Vineville Avenue. Said parcel of land being shown on a plat in a subdivision of the Culver Property in Vineville made by H.D. Cutter, Civil Engineer, and of record in Book 130, page 817, to which plat reference is made in aid of this description.

TO HAVE AND TO HOLD, the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in any wise appertaining, to the only proper use, benefit and behoof of the said parties of the second part, and their successors in office as such trustees for Vineville Presbyterian Church and assigns in FEE SIMPLE.

The above named Trustees, and their successors in office as such Trustees for Vineville Presbyterian Church are hereby granted the specific power and authority to sell and convey or mortgage or convey the title thereto as security for any loan that may be made to said church, and to do all acts and things incident thereto, any part or all of the real estate herein described, by complying with the rules and regulations of the Church only. No authority shall be required from any court or the judge thereof to do any of the acts herein set forth.

And the said party of the first part, for herself and her heirs, executors and administrators will warrant and forever defend the right and title to the above described

property unto the said parties of the second part, their successors in office as trustees, legal representatives and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set her hand, affixed her seal and delivered these presents, the date and year first above written.

ELIZABETH BATE CHAMBERS

.....(SEAL)  
Elizabeth Bateman  
Chambers

Signed, sealed and delivered  
by Elizabeth Bateman Cham-  
bers in the presence of

MIRIAM DAVIS

DOROTHY DANIEL

Notary Public, Hillsborough County, Florida



## EXHIBIT G

STATE OF GEORGIA  
COUNTY OF BIBB

THIS INDENTURE, Made and entered into this the 30th day of December, in the year of our Lord One Thousand Nine Hundred Sixty, between Mrs. VIRGINIA BATEMAN COMER of Bibb County, Georgia, MRS. HELEN BATEMAN BOWEN of Tift County, Georgia, and MRS. BETTY BATEMAN CHAPMAN of \_\_\_\_\_ County, Florida, parties of the first part, and EMMETT BARNES, III, R. E. LUCAS and HERBERT SMART, all as Trustees for VINEVILLE PRESBYTERIAN CHURCH, and their successors in office as such trustees for said Church, of Bibb County, Georgia, parties of the second part.

## WITNESSETH

That the said parties of the first part, for and in consideration of the sum of One Hundred Dollars and other good and valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said parties of the second part as the present Trustees for Vineville Presbyterian Church and their successors in office as such trustees and their assigns, all the following described property:

All that tract or parcel of land situate, lying and being in the Vineville District of Bibb County, Georgia, in the City of Macon, fronting 81 feet on Vineville Avenue and extending back to a 12-foot alley in the rear, said parcel of land being more particularly described as follows: Beginning where the western property line of the

lot now or formerly owned by E. S. Taylor (formerly Hopson) intersects Vineville Avenue, and extending thence in a westerly direction along Vineville Avenue a distance of 81 feet; thence in a northerly direction a distance of 239.9 feet; to a 12-foot alley; thence in an easterly direction along the line of said alley a distance of 112.2 feet; thence in a southerly direction along the line of the property now or formerly belonging to E. S. Taylor a distance of 264 feet to the point of beginning on Vineville Avenue. Said parcel of land being shown on a plat of a subdivision of the Culver Property in Vineville made by H.D. Cutter, C.E., and of record in Book 130, page 817, to which plat reference is made in aid of this description.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in any wise appertaining to the only proper use, benefit and behoof of the said parties of the second part, and their successors in office as such trustees for Vineville Presbyterian Church and assigns in FEE SIMPLE.

The above named trustees, and their successors in office as such trustees for Vineville Presbyterian Church are hereby granted the specific power and authority to sell and convey or mortgage or convey the title thereto as security for any loan that may be made to said church, and to do all acts and things incident thereto, any part or all of the real estate herein described, by complying with the rules and regulations of the Church only. No authority shall be required from any court or the Judge thereof to do any of the acts herein set forth.

And the said parties of the first part, for themselves and their heirs, executors and administrators will warrant and forever defend the right and title to the above

described property unto the said parties of the second part, their successors in office as Trustees, legal representatives and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands, affixed their seals and delivered these presents the date and year first above written.

MRS. VIRGINIA BATEMAN COMER  
.....(SEAL)  
Mrs. Virginia Bateman Comer

Signed, sealed and delivered by  
Mrs. Virginia Bateman Comer in  
the presence of

ALBERT P. REICHERT  
.....

DOROTHY B. SCHOFIELD  
.....

Notary Public,  
Bibb County, Georgia

MRS. HELEN BATEMAN BOWEN  
.....  
Mrs. Helen Bateman Bowen

Signed, sealed and delivered by  
Mrs. Helen Bateman Bowen in the  
presence of

C. A. BOWEN  
.....

S. C. STRICKLAND  
.....

Notary Public,

MY COMMISSION EXPIRED 10/14/63

MRS. BETTY BATEMAN CHAPMAN  
.....(SEAL)  
Mrs. Betty Bateman Chapman

Signed, sealed and delivered by  
Mrs. Betty Bateman Chapman in  
the presence of

.....  
Notary Public,

MY COMMISSION EXPIRED 10/14/63

GEORGIA, BIBB COUNTY,  
Clerk's Office Superior Court  
Filed for Record  
Jan. 4, 1961  
Recorded Jan. 5, 1961

## EXHIBIT H

STATE OF GEORGIA  
COUNTY OF BIBB

THIS INDENTURE, made this 30th day of December in the year of our Lord One Thousand Nine Hundred and Sixty between Deway C. Bateman as Trustee for His Children of the State of Georgia and County of Bibb party of the first part and Emmett Barnes, III, R. E. Lucas and Herbert Smart all as Trustees for Vineville Presbyterian Church & their successors in office as Trustees of the State of Georgia and County of Bibb party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One and No/100 Dollars in hand paid at and before the sealing of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain sell and convey unto the said party of the second part their successors, legal representatives, and assigns, all that tract or parcel of land lying and being in the Vineville District of Bibb County, Georgia, in the City of Macon, fronting 81 feet on Vineville Avenue and extending back to a 12-foot alley in the rear, said parcel of land being more particularly described as follows: Beginning where the western property line of the lot nor or formerly owned by E. S. Taylor (formerly Hopson) intersects Vineville Avenue, and extending thence in a westerly direction along Vineville Avenue a distance of 81 feet; thence in a northerly direction a distance of 239.9 feet to a 12-foot alley; thence in an easterly direction along the line of said alley a distance of 112.2 feet, thence in a southerly direction along the line of the property now or formerly belonging to E. S. Taylor a distance of 264 feet to the point of beginning on Vineville Avenue. Said parcel of land being shown on a plat of a subdivision of the Culver

Property in Vineville made by H. D. Cutter, C. E. and of record in Book 130, page 817, to which plat reference is made in aid of this description.

This deed is made in exercise of the power of sale contained in the wil of Mrs. Leola E. Bateman probated in Solemn Form in the Ordinary's Office of Bibb County, Georgia in Will Book J, folio 210.

The above named Trustees, and their successors in office as such Trustees for Vineville Presbyterian Church are hereby granted the specific power and authority to sell and convey or mortgage and convey the title thereto a security for any loan that may be made to said church, and to do all acts and things incident thereto, any part or all of the real estate herein described, by complying with the rules and regulations of the Church only. No sauthority shall be required from any court or the Judge thereof to do any of the acts herein set forth;

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in any wise appertaining, to the only proper use, benefit and behoof of them the said parties of the second part their successors and assigns, IN FEE SIMPLE.

And the said party of the first part, for himself & his heirs, executors and administrators will warrant and forever defend the right and title to the above described property unto the said parties of the second part their successors, and assigns, against the lawful claims, of all persons whomsoever.



IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand affixed his seal and delivered these presents, the day and year above written.

DEWAY C. BATEMAN  
\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

# EXHIBIT "I"

IN RE	NO. 47 FEBRUARY TERM, 1915
VINEVILLE PRESBYTERIAN	BIBB SUPERIOR COURT
CHURCH	PETITION FOR CHARTER

GEORGIA, BIBB COUNTY:  
TO THE SUPERIOR COURT OF SAID COUNTY:

Petition of T. S. Lowrey, G. T. Kinnett, C. O. Stone, and R. C. Corbin, all of said State and County, respectfully shows:

1st. That a Church has been established in Vineville, City of Macon, corner of Vineville Avenue and Culver Street, known as the Vineville Presbyterian Church.

2nd. That said first two named persons are Trustees for said Church, holding the title to the property in their names as such Trustees.

3rd. Petitioners desire for themselves and the other members of said Church, their associates and successors, to become incorporated as a religious society, under the name and style of the Vineville Presbyterian Church, and as such corporation to receive donations, and to own, hold and convey both personal and real estate.

4th. The sole object and purpose of the proposed corporation is to promote the cause of the Christian religion.

5th. The term for which petitioners ask to be incorporated is twenty years, with the privilege of renewal at the end of that time.

WHEREFORE, petitioners pray for themselves and their associates incorporation under the name and style of the Vineville Presbyterian Church, and with all the rights, privileges, immunities and restrictions provided by law.

THOS. B. WEST  
*Attorney for Petitioner*

ORDER  
IN BIBB SUPERIOR COURT.

It appearing to the Court that said petition has been duly filed, and is legitimately within the purview of the law, and that same has been duly advertised once a week for four weeks as provided by the Statute; it is ordered that said petition be granted as prayed for, and that petitioners for themselves and their associates and successors, be incorporated as a religious society under the name and style of the Vineville Presbyterian Church, and as such corporation, be empowered to receive donations, and to own, hold and convey both personal and real estate, and have generally all the rights, privileges, immunities, and restrictions pertaining to such religious corporation. In Open Court this 29 day of April, 1915

H. A. MATTHEWS, J.S.C.M.C.

(Recorded March 23, 1933) A

GEORGIA, BIBB COUNTY.  
TO THE SUPERIOR COURT OF SAID COUNTY.

1. That, on the 29th day of April, 1915, T. S. Lowry, G. T. Kinnett, C. O. Stone and R. C. Corbin all of said state and county, and their associates and successors, by order of this Honored Court, were incorporated, as a religious society, under the name and style of the Vineville Presbyterian Church, for a term of twenty (20) years, with the privilege of renewal at the end of that term; the sole object of said incorporation being the promotion of the Christian religion;

2. That said incorporators, their associates and successors, have continued to perform the object of said incorporation, ever since the date of said incorporation, aforesaid, and untill the present time, in ignorance of the expiration of the term of said incorporation, which expired on the 29th day of April, 1935;

3. That it is the desire of the officers and members of said church to continue to carry the purposes thereof, under said order of incorporation and, to that end, it is their desire that said charter may be revived and renewed for a term of Thirty-five (35) years, from and after the date of the expiration of said charter, to-wit: on the 29th day of April, 1935.

WHEREFORE, petitioners pray, for themselves, their associates and successors, that said charter may be revived and renewed, as aforesaid, with all of the rights, powers, privileges and immunities, which were granted to their predecessors by said original order of incorporation.

ANDERSON & ANDERSON  
*Attorneys for Petitioners.*

Macon, Ga., March 10, 1938

WHEREAS, it appears that the charter, which was granted to the Vineville Presbyterian Church, of Macon, Georgia, by the Superior Court of Bibb County, Georgia, on the 29th day of April, 1915, for a period of twenty (20) years, expired on the 29th day of April, 1935; and that the Session and Members of said Church have continued, since the expiration of said charter, to operate said Church, in ignorance of the expiration of said charter;

AND WHEREAS, it is the desire of the Session and Members of said Church that said charter should be revived;

IT IS, THEREFORE, RESOLVED, by the Session of said Church, in meeting duly assembled, the Trustees of said Church, to-wit: Herbert I. Smart, W. Morris Brown and W. W. Hackett be as they are hereby authorized and directed to take all steps and incur all expense necessary to procure, in a legal and proper manner, a reviver of said charter, for another term of years.



## GEORGIA, BIBB COUNTY.

The undersigned, the Clerk of the Session of the Vineville Presbyterian Church, hereby certifies that the foregoing is a true and correct copy of the resolution, which was duly adopted by the Session of said Church, at a meeting thereof, duly and legally called for the purposes indicated therein, and that a quorum of said Session was present at said meeting.

Given under my official hand this the 10th day of March 1938.

B. W. HOLTZELAR

*Pro-tem Clerk of Session,  
Vineville Presbyterian Church.*

## ORDER

It appearing to the Court that the "Vineville Presbyterian Church" was duly and legally incorporated, by this Court, on the 29th day of April, 1915, for a term of twenty (20) years, with the privilege of renewal at the expiration thereof; and that the incorporation thereof and their successors and associates have continued to carry on the objects of said incorporation, since the expiration of the term thereof, in ignorance of the expiration of the term of said incorporation; and that a revivor and renewal of said charter has been duly authorized by legitimate corporate action; and that the foregoing petition is legitimate within the purview and intention of the law of this state;

IT IS, THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that said charter be and the same is hereby revived and renewed for a term of thirty-five (35) years from the 29th day of April, 1935, with all of the powers, privileges and immunities provided by law in such cases.

This the 31 day of Jany. 1939

MALCOLM D. JONES,  
J.S.C.M.C.

(Recorded March 22-1939)

## EXHIBIT K

STATE OF GEORGIA, BIBB COUNTY.

THIS INDENTURE, Made the 28th day of March in the year of our Lord One Thousand Nine Hundred and Ten between T. S. Lowry and G. T. Kinnett as Trustees of the Vineville Presbyterian Church of the County of Bibb State of Georgia, of the one part, and The Trustees of Mercer University of the County of Bibb State of Georgia of the other part:

WITNESSETH, That the said T. S. Lowry and G. T. Kinnett as Trustees aforesaid for and in consideration of the sum of Six Thousand (\$6000.00) Dollars in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, convey and confirm unto the said The Trustees of Mercer University, its successors and assigns that lot or parcel of land situate, lying & being in the Vineville District of Bibb County, Georgia, beginning at a point where Culver Street intersects Vineville Avenue and running along the East side of said Culver Street a distance of two hundred and ten (210) feet more or less, to an alley, thence along said alley a distance of one hundred (100) feet; thence at right angles to said alley along a line parallel to Culver Street a distance of two hundred and ten (210) feet more or less to Vineville Avenue, thence along said Vineville Avenue a distance of one hundred (100) feet to the point of beginning, said lot being a part of the land which was conveyed to Richard H. Moore and John L. Culver by J. O. Moore by deed dated January 16th, 1899 and recorded in Book 96, folio 665 in the Office of the Clerk of the Superior Court of Bibb County. This deed being executed in pursuance of authority conveyed by a congregational

meeting of the Vineville Presbyterian Church, held March 6th, 1910.

TO HAVE AND TO HOLD the said bargained premises, with all the rights and appurtenances thereto appertaining to the only proper use and behoof of said party of the second part, its successors and assigns, in FEE SIMPLE; and the said party of the first part the said bargained premises unto the said party of the second part, its heirs, executors, administrators, successors and assigns against the said party of the first part, their heirs, executors and administrators, and against all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

THIS CONVEYANCE is intended to pass the title of the property described into the said party of the second part, the debt hereby secured being one certain note and ten interest coupons, all of even date herewith. Said note being for the principal sum of Six Thousand (\$6,000.) Dollars, United States Gold Coin of the present standard of weight and fineness, payable five years from date to the order of The Trustees of Mercer University at any Bank in Macon, Ga. and said interest coupons being for the sum of One Hundred and Eighty Dollars, each in like coin, payable semi-annually, to-wit: on the 28th days of September and March in each year to The Trustees of Mercer University on order at any Bank in Macon, Ga. The said party of the first part hereby agrees to fully insure and keep fully insured the property herein conveyed and to pay all taxes due or to become due on the same, and all taxes or assessments that may be levied or made and if said party of the first part shall fail to pay the premiums for insurance on said property or any said taxes or assessments, and said party of the second part, or assigns, shall pay such premiums or taxes, then this deed shall stand as security for the same, with interest on the premiums paid at eight per cent. per annum, and on the taxes paid as now

fixed by law, and above stipulated, in addition to the debt hereinbefore mentioned; should any tax be imposed on this instrument or on the indebtedness secured hereby, by or within the State of Georgia, in division and reduction of the tax on real estate conveyed by this instrument, then, at the option of the lawful holder of this deed, the whole principal, with interest then accrued and other sums secured hereby, shall at once become due and payable and the holder may proceed to collect the same by process, as provided by law or otherwise, as such holder may elect; and said party of the first part agree if any of said notes are not paid when due, according to the tenor thereof, and such default continue for thirty days, or if said premiums are not promptly paid, or said taxes, or assessments are not paid before same become delinquent, then the whole of said debt shall become due and payable, at the option of the holder, time being the essence of the contract, and said party of the second part, agent or representative, or assigns, or the Sheriff of Bibb County, may, and are hereby authorized to proceed at once to sell at the court house door in Bibb County, to the highest bidder for cash, all of said property, or a sufficiency thereof, at the option of the holder hereof, to pay all the indebtedness herein referred to, with interest and insurance premiums and taxes, if any, with interest and all expenses of this proceeding including ten per cent attorney's fees, if incurred, after advertising the time, place, and terms of sale, in the newspaper in which the Sheriff's sales of Bibb County are advertised, once a week for four weeks, with the right to said party of the second part, its assigns, or holder of this indebtedness, to bid on and purchase said property at such sale. And said party of the second part, its agents, representatives, or assigns, holder as aforesaid, or the Sheriff of Bibb County, are authorized to make to the purchaser of said property FEE SIMPLE titles to the same, thereby divesting out of the said party of the first part all right and equity that they may have, or may

hereafter have, in and to said property, and vesting the same in the purchaser thereof. The proceeds of said sale are to be applied, first, to the payment of the said debt and interest, said premiums and taxes, if any, with interest, ten per cent. attorney's fees, if incurred, and the expenses of this proceeding, and the remainder, if any, to be paid to said party of the first part, or agents or representatives.

The said party of the second part, its agent, representative or assigns, or the Sheriff of Bibb County shall be authorized to proceed summarily to put the purchaser in possession, the said party of the first part agreeing to surrender the same without let or hindrance of any kind.

But the foregoing powers for realizing on this security are cumulative only of the remedies to which said party of the second part is entitled under the laws of Georgia, and if said party of the second part shall so elect, this conveyance shall be considered as a mortgage, and can be foreclosed as by statute in such cases, made and provided. Receipt of the bond to Reconvey in compliance with the Statute, is hereby acknowledged.

IN WITNESS WHEREOF, Said T. S. Lowry and G. T. Kinnett as Trustees of the Vineville Presbyterian Church have hereunto set their hands and seals and delivered these presents, the day and year first above written.

*Signed, sealed and delivered in presence of*

B. J. DASHER

THOS. B. WEST, Not. Pub. Bibb Co., Ga.

T. S. LOWRY as Trustee of the  
Vineville Presbyterian Church

[L.S.]

G. T. KINNETT as Trustee of the  
Vineville Presbyterian Church,

[L.S.]

RECORDED April 1st, 1910



## EXHIBIT L

STATE OF GEORGIA, BIBB COUNTY,

THIS INDENTURE, Made the 16th day of August in the year of our Lord One Thousand Nine Hundred and ten between T. S. Lowry and G. T. Kinnett as Trustees of Vineville Presbyterian Church of the County of Bibb State of Georgia, of the one part, and The Trustees of Mercer University of the County of Bibb State of Georgia of the other part:

WITNESSETH, That the said T. S. Lowry and G. T. Kinnett as Trustees aforesaid for and in consideration of the sum of One Thousand (\$1000) Dollars in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, convey and confirm unto the said The Trustees of Mercer University its successors and assigns That tract of land in Vineville, now in the City of Macon on the corner of Vineville Avenue and Culver Street, and particularly described in a Deed to secure Debt between the same parties, dated March 20th, 1910 and recorded in the Office of the Clerk of Bibb Superior Court in Book 124, folio 338, to which said deed this deed is second and inferior.

This deed being executed in pursuance of resolutions adopted at a congregational meeting of said Vineville Presbyterian Church, August 6th 1910.

TO HAVE AND TO HOLD the said bargained premises, with all the rights and appurtenances thereto appertaining to the only proper use and behoof of said party of the second part, its successors and assigns, in FEE SIMPLE; and the said party of the first part the said bargained premises unto the said party of the second part, its successors and assigns against the said party of the first part, their heirs,

executors and administrators, and against all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

THIS CONVEYANCE is intended to pass the title of the property described into said party of the second part for the purpose of securing a debt same being one certain note and ten interest coupons, all of even date herewith. Said note being for the principal sum of One Thousand (\$1000) Dollars, United States Gold Coin of the present standard of weight and fineness, payable five years from date to the order of The Trustees of Mercer University at any bank in Macon Ga. and said interest coupons being for the sum of Thirty (\$30.00) Dollars, each one payable semi-annually, to-wit: on the 16th days of February and August in each year to The Trustees of Mercer University or order at any bank in Macon Ga. The said party of the first part hereby agrees to fully insure and keep fully insured the property herein conveyed and to pay all taxes due or to become due on the same, and all taxes or assessments that may be levied or made and if said party of the first part shall fail to pay the premiums for insurance on said property or any said taxes or assessments, and said party of the second part, or assigns, shall pay such premiums or taxes, then this deed shall stand as security for the same, with interest on the premiums paid at eight per cent per annum, and on the taxes paid as now fixed by law, and above stipulated, in addition to the debt hereinbefore mentioned; should any tax be imposed on this instrument or on the indebtedness secured hereby, by or within the State of Georgia, in division and reduction of the tax on real estate conveyed by this instrument, then, at the option of the lawful holder of this deed, the whole principal, with interest then accrued and other sums secured hereby, shall at once become due and payable and the holder may proceed to collect the same by process, as provided by law or otherwise, as such holder may elect; and said party of the first part agrees if any of said notes are

not paid when due, according to the tenor thereof, and such default continue for thirty days, or if said premiums are not promptly paid, or said taxes, or assessments are not paid before same become delinquent, then the whole of said debt shall become due and payable, at the option of the holder, time being the essence of the contract, and said party of the second part, its agent or representative, or assigns, or the Sheriff of Bibb County, may, and are hereby authorized to proceed at once to sell at the court house door in Bibb County, to the highest bidder for cash, all of said property, or a sufficiency thereof, at the option of the holder hereof, to pay all the indebtedness herein referred to, with interest and insurance premiums and taxes, if any, with interest and all expenses of this proceeding, including ten per cent. attorney's fees, if incurred, after advertising the time, place, and terms of sale, in the newspaper in which the Sheriff's sales of Bibb County are advertised, once a week for four weeks, with the right to said party of the second part, its assigns, or holder of this indebtedness, to bid on and purchase said property at such sale. And said party of the second part, its agents, representatives, or assigns, holder as aforesaid, or the Sheriff of Bibb County, are authorized to make to the purchaser of said property FEE SIMPLE titles to the same, thereby divesting out of the said party of the first part all right and equity that they may have, or may hereafter have, in and to said property, and vesting the same in the purchaser thereof. The proceeds of said sale are to be applied, first, to the payment of the said debt and interest, said premiums and taxes, if any, with interest, ten per cent. attorney's fees, if incurred, and the expenses of this proceeding, and the remainder, if any, to be paid to said party of the first part, or agents or representatives.

The said party of the second part, its agent, representative or assigns, or the Sheriff of Bibb County shall be authorized to proceed summarily to put the purchaser in

possession, the said party of the first part agreeing to surrender the same without let or hindrance of any kind.

But the foregoing powers for realizing on this security are cumulative only of the remedies to which said party of the second part is entitled under the laws of Georgia, and if said party of the second part shall so elect, this conveyance shall be considered as a mortgage, and can be foreclosed as by statute in such cases, made and provided. Receipt of the bond to Reconvey in compliance with the Statute, is hereby acknowledged.

IN WITNESS WHEREOF, Said T. S. Lowry and G. T. Kimett as Trustees aforesaid hath hereunto set their hands and seals and delivered these presents, the day and year first above written.

*Signed, sealed and delivered  
in presence of*

C. O. STONE

THOS B. WEST Not. Pub.  
Bibb Co. Ga.

T. S. LOWRY Trustee  
Vineville Pres. Ch.  
.....[L.S.]

G. T. KINNETT Trustee  
Vineville Pres. Ch.

.....[L.S.]  
RECORDED Aug 20, 1910



## EXHIBIT M

STATE OF GEORGIA,  
BIBB COUNTY.

THIS INDENTURE, Made this 17th day of May, 1915 by and between Vineville Presbyterian Church by its Trustees, G. T. Kinnett, T. S. Lowry and C. O. Stone, of the County of Bibb State of Georgia, party of the first part and GEORGE K. JOHNSON and JOHN W. HAMER, both of the City of Philadelphia, Pennsylvania, as trustees for the payee or payees or holder or holders of the note hereinafter described, parties of the second part, witnesseth:

That the Penn Mutual Life Insurance Company of Philadelphia, Pennsylvania, has this day loaned said party of the first part the sum of Three Thousand (\$3,000.00) Dollars, evidenced by the promissory note as hereinafter described of the said party of the first part, of even date herewith, whereby said party of the first part hath promised to pay to the said The Penn Mutual Life Insurance Company, the amount set out herein at the times set out hereinafter, without grace, at the office of the said The Penn Mutual Life Insurance Company in the City of Philadelphia, Pennsylvania, in gold coin of the United States of America of the present standard of weight and fineness, with interest thereon at the rate of six per cent. per annum, payable semi-annually in like gold coin.

The time of the payments of said principal and interest are as follows, each without grace: \$300.00 of said principal on November 1st, 1915, \$600.00 each on November 1st, 1916, 1917, 1918 and 1919, and \$300.00 on November 1st, 1920.

And

Interest on the unpaid balance of said note on the 1st days of November and May of each year at the rate of six per cent per annum.

Now, in consideration of the premises, and in order to secure the said indebtedness under the terms and conditions stated in said note and in this instrument hereinafter and after contained, and in consideration of the further sum of Ten Dollars, in hand paid to the said party of the first part by the parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said party of the first part doth hereby grant, bargain, sell, and convey unto the said parties of the second part, their successor or successors in trust, all of the following described real estate, to-wit:

All that lot or parcel of land situate, lying and being in the Vineville District of Bibb County, Georgia, beginning at a point where Culver Street and Vineville Avenue intersects, and running along East side of Culver Street a distance of two hundred and ten (210) feet, more or less to an alley; thence along said alley a distance of one hundred (100) feet; thence at right angles to said alley along a line parallel to Culver Street a distance of two hundred and ten (210) feet, more or less to Vineville Avenue; thence along said Vineville Avenue a distance of one hundred (100) feet to point of beginning; said lot being a part of land which was conveyed to Richard H. Moore and John L. Culver by J. O. Moore by deed dated January 16th, 1899, and recorded in Book 96, folio 663, Clerk's Office, Bibb Superior Court, together with the pews and all fixtures now installed in the Church upon said lot.

TO HAVE AND TO HOLD the said bargained premises, with all and singular the rights, members and appurtenances thereunto pertaining or belonging and including all buildings, outhouses, fixtures, and improvements thereon, unto the said parties of the second part, their successor or successors in trust or their assigns in fee simple forever.



This conveyance is made to the said parties of the second part in trust, however, under the terms hereof for the benefit and security of the payee or payees or holder or holders of the note hereinbefore set forth; and in case of default, for the purpose of enforcing the performance and observation by said party of the first part of all the covenants and agreements and in said principal note contained; and as set forth in the bond to reconvey of this date, executed and delivered by the said parties of the second part, which said bond to reconvey is hereby incorporated in and made of this instrument.

For the purposes of said trust, it is the intention of said party of the first part to convey to said parties of the second part the absolute title to the above described property in fee simple; and the said party of the first part hereby covenants and represents that it is lawfully seized of title and possession of said property; has a good right to convey it; that it is unencumbered; that it warrants the same to said parties of the second part, their successor or successors in trust, against the lawful claims of all persons whomsoever.

It is agreed that in event the said party of the first part shall fail to keep, observe carry out and execute in every particular the obligation, stipulations, conditions, and covenants set out in this instrument and said note and the bond to reconvey, which is, with all of its obligations, stipulations, conditions, covenants, and agreements incorporated as a part of this instrument, it shall be and is hereby made the option of the said parties of the second part, their successor or successors in trust, to declare all of the indebtedness secured by this instrument to be due and payable at once.

It is further agreed that the said indebtedness shall draw interest at the rate of eight per centum per annum after maturity, whether in course or by default.

The said party of the first part further covenants and agrees that in case the debts secured shall not be paid in full when they become due by maturity in due course or by reason of the default above provided, the parties of the second part may enter upon said premises and collect the rents and profits thereof, may sell the said property at auction at the court-house door in City of Macon, in said County and State to the highest bidder for cash, first giving four weeks' notice of the time, terms and place of sale by advertising once a week in a daily newspaper published in City of Macon, all other notice being hereby waived by the said party of the first part; and thereupon to execute and deliver to the purchaser at said sale a sufficient conveyance of said premises in fee simple, which said conveyance shall contain a recital as to the happening or default upon which execution of the power to sell herein granted depends. And the said party of the first part hereby constitutes and appoints said parties of the second part, or either of them, their agents or attorneys in fact, to make such recital, and hereby covenants and agrees that the recital so to be made by the said parties of the second part shall be binding and conclusive upon its successors and assigns. And the conveyance to be made by said parties of the second part shall be effectual to bar all equity or redemption of the said party of the first part, its successors in interest, in and to said premises. The said parties of the second part shall collect the proceeds of said sale, and have reserved therefrom the entire amount of principal and interest due, together with the amount of taxes, assessments, premiums of insurance theretofore paid by said parties of the second part with eight per cent. interest per annum from the date of payment, together with all cost and expense of sale and ten per cent. upon the aggregate amount due or said trustees' compensation, and ten per cent. upon the aggregate amount due for compensation to the attorneys representing said trustees. And shall pay over any surplus to the party of the first

part, its successors or assigns. And said parties of the second part, their successors or assigns, may purchase at said sale, and execute and deliver to themselves conveyance as therein provided as though they were strangers to this instrument.

And the said party of the first part further covenants and agrees that the powers of attorney hereinbefore and after stipulated, together with all the powers of this instrument set out and delegated to the said parties of the second part, may be assigned and delegated and redelegated to the said parties of the second part, and shall apply to their successors in office with equal power in them to assign and delegate and redelegate said powers, and that any purchaser of said note may, at his option, by the fact of purchased, become possessed of all the powers and authority herein set forth and conferred upon said parties of the second part.

The said party of the first part further covenants that the relation with the said parties of the second part, during the term of this instrument, shall be that of tenant under the said parties of the second part; and in case of a sale as hereinbefore provided, or by foreclosure by process of law, the party of the first part, or any one claiming under the said party of the first part, shall then become and be a tenant or tenants holding over, and shall forthwith deliver possession at said sale or be summarily dispossessed according to the provisions of law applicable to tenants holding over.

The foregoing provisions however are cumulative of the remedies allowed by law, and in the event that the parties of the second part institute any proceedings in any court to enforce their rights, or the right of the payee or holders of said note or exercise the powers herein conferred, or shall take legal assistance in discharging their said trust, they shall be entitled to receive such compensation for said services in an amount equal to ten per

cent of the principal and accrued interest then due, which shall be secured hereby and be paid by the said party of the first part, together with and in addition to ten per cent due as attorney's fees.

It is agreed that in case of removal, resignation or incapacity of said trustees, or either of them, for any cause whatsoever, or in case of any vacancy in the office of said trustees, the owner of said note shall have the right to appoint in writing, a successor or successors without any order of any court or consent of the party of the first part, or other formality. It is further agreed that in case of death, removal, resignation, or incapacity of either of said trustees, and no appointment is made to fill said vacancy, the remaining trustee may discharge all the duties of the office. And in case of such appointment, all the estate, rights, powers and privileges hereby conveyed shall vest in said new trustees upon their acceptance of said trust endorsed in writing upon this indenture, without other formality.

The party of the first part agrees that all insurance carried or which may be carried upon the property above described is and shall be for the benefit of the said parties of the second part, their successor or successors in trust.

It is further agreed that the said party of the first part will maintain insurance on the said premises to the amount of not less than Nine Thousand Five Hundred (\$9,500.00) Dollars against loss by fire or lightning, with loss payable to the parties of the second part; said insurance to be maintained in such companies as the said parties of the second part may select from time to time.

It is further agreed that in the event the said party of the first part fails to maintain said insurance on said property in such company or companies as the parties of the second part, their successors or assigns, may from time to time select, the said parties of the second part, their



successors or assigns, may take out such insurance and the premiums so paid will become a part of the debt secured hereby, and such sums so paid shall bear interest at eight per cent per annum. This may also declare said indebtedness to be immediately due.

In case the parties of the second part elect, in accordance with the authorization of this loan deed, to advance insurance premiums or taxes, the receipt of an official of the insurance company in which such insurance is placed shall, with respect to any such insurance premiums, be conclusive evidence as between the parties to this loan deed of the amount and the fact of payment thereof; and the receipt of the proper public official shall, with respect to the taxes, be conclusive evidence between the parties to this conveyance of the amount and validity, and the fact of payment of same.

The party of the first part will pay all taxes which may be assessed upon the said land premises or property; or upon the parties of the second part's interest therein; or upon this trust deed or the moneys secured hereby without regard to any law heretofore enacted, or hereafter to be enacted, imposing payment of the whole or any part thereof upon the parties of the second part, excepting only the Federal Income Tax. Upon violation of this undertaking, or the passage by the State of a law imposing payment of the whole or any portion of any of the taxes aforesaid upon the parties of the second part, or upon the rendering by any court of competent jurisdiction of a decision that the undertaking by the party of the first part as herein provided to pay any tax or taxes is legally inoperative, then and in any such event the debt hereby secured without any deduction, shall, at the option of the parties of the second part, become immediately due and collectible, notwithstanding anything contained in this trust deed or any law hereafter enacted.

Contemporaneous with this instrument is executed and delivered by the said parties of the second part to said party of the first part a bond to reconvey, made to conform to Sections 3306 to 3317, inclusive, of the Code of Georgia of 1910.

In witness whereof the said party of the first part hath thereunto set its hand and seal on the day and year first above written as the date hereof.  
Signed, sealed and delivered in presence of:

Alice Cody

Vineville Presbyterian  
Church by its Trustees.

Roland T. Mahone,

T. S. Lowry (L.S.)

Notary Public, Bibb Co. Ga.  
(Not. Seal) Com.

C. T. Kinnett (L.S.)

Expires Mch. 13, 1916.

C. O. Stone (L.S.)

Recorded May 26th, 1915.



## EXHIBIT "N"

RECORD BOOK NO. 472/237

## STATE OF GEORGIA, COUNTY OF BIBB

THIS INDENTURE, made this first day of January in the year of our Lord One Thousand Nine Hundred and Forty between HERBERT I. SMART, CLAUDE M. TRAWICK, and W. W. HACKETT, as Trustees for the Vineville Presbyterian Church of the State of Georgia and County of Bibb hereinafter called the "first party," and The Georgia Industrial Home of the State of Georgia and County of Bibb hereinafter called the "second party."

WITNESSETH: That the first party, for and in consideration of the sum of FIVE THOUSAND AND NO/100 (\$5,000.000) DOLLARS, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, convey and confirm unto the second party, all that tract or parcel of land, lying and being in the Vineville District of Bibb County, Georgia, beginning at a point where Culver Street and Vineville Avenue intersect, and running along East side of Culver Street a distance of two hundred and ten (210) feet, more or less to an alley; thence along said alley a distance of one hundred (100) feet; thence at right angles to said alley along a line parallel to Culver Street a distance of two hundred and ten (210) feet, more or less to Vineville Avenue; thence along said Vineville Avenue a distance of one hundred (100) feet, to point of beginning; said lot being a part of land which was conveyed to Richard H. Moore and John L. Culver by J. O. Moore by deed dated January 16th, 1899, and recorded in Book 96, folio 665, Clerk's Office, Bibb Superior Court; and being the same property which was conveyed under deed dated July 15, 1908 by Richard H.

Moore and John L. Culver to T. S. Lowry and G. T. Kinnett, as trustees of the Vineville Presbyterian Church, which deed is recorded in the Clerk's Office, Bibb Superior Court in Book 147, Folio 456.

This deed is executed in pursuance of authority conveyed by a congregational meeting of the Vineville Presbyterian Church, November 26, 1939, of which due notice was given and at which a quorum was present, a resolution being adopted unanimously to execute the same.

It is agreed that the parties of the first part have the right to pay any denomination of two hundred and fifty (\$250.00) dollars on the balance due at any interest paying date, together with the accrued interest due on said date, so as to reduce or pay the principal balance in full; and in such event of payment, interest from that date shall be on the unpaid principal balance, if not paid in full.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereunto belonging or in any wise appertaining to every proper use, benefit and behoof of the second party forever IN FEE SIMPLE;

And the first party will warrant and forever defend the right and title to the above described property unto the second party against the lawful claims and demands of all persons whomsoever.

THIS INSTRUMENT is intended by the parties hereto and is to be construed as a deed passing title, and is made under the provisions of section 3306 et seq. and section 6037 of the Code of Georgia of 1910, to secure the payment of a debt, evidenced by certain promissory notes executed this day by the said first party, and payable to the said second party, or order, and being further described as follows:

one principal note for five thousand dollars of which \$2,500.00 is due in installments of \$250.00 payable on

the first days of April and October in the years 1940, 1941, 1942, 1943, and 1944, and the other half, \$2,500.00 is due on January 1, 1945;

interest notes for the unpaid principal balance, the first of which is due April 1, 1940 and due on the first days of April, July, October, and January of the years 1940, 1941, 1942, 1943 and 1944, and the last on January 1, 1945, at the rate of 6% per annum.

Together with such other notes as may be given in renewal or extension of any or all of the above described notes.

The above notes provide for the payment of all costs of collection, including ten per cent of the principal and interest as attorney's fees.

The first party hereby covenants and agrees with the second party:

To keep the said property insured during the continuance of this loan and to pay the premiums of insurance when due; to pay all taxes on said property when the same fall due and before the levy or advertisement of any tax execution thereon; that if any interest note is not promptly paid when the same becomes due (time being hereby expressly made of the essence) or should the first party fail to pay any insurance premium or the taxes as aforesaid, then the entire principal of said debt shall become due and payable at once if the second party shall so elect; that if the above debt or any part thereof, is not promptly paid at maturity, or if said party shall fail to pay the insurance premiums and taxes as aforesaid, then the said second party, or the second party's legal representative or assignee, immediate or remote, may and by these presents is authorized to sell at public outcry, before the courthouse door of the county in which said real estate is situated, in whole or in part, to the highest bidder for cash, all of said property to pay said principal with the

interest thereon to the date of sale, and expenses of the proceedings, including 10 per cent attorney's fees, if incurred, on the amount of the principal and interest due, after advertising the time, place and terms of sale in any newspaper published in the county in which the sale of said real estate is to be made as aforesaid, once a week for four weeks prior to said date of sale, and it is hereby stipulated that the foregoing power of sale being coupled with and interest shall be irrevocable by the death of either party thereto; and the second party, representative or assignee, so desiring, may bid at said sale and may make to the purchaser or purchasers of the said property good and sufficient titles in Fee-Simple thereto, thereby divesting out of the first party all right and equity that the first party may have in and to said property, and, vesting the same in the purchaser or purchasers aforesaid. The proceeds of said sale are to be applied first to the payment of said debt and interest, also all taxes and premiums of insurance that may have been paid on said property by the second party, and the expenses of said proceedings, the remainder, if any, to be paid to the first party. The party exercising this power of sale shall be authorized to proceed summarily to put the purchaser or purchasers in possession, the first party covenanting and agreeing to surrender the same without let or hindrance of any kind. The method of sale hereinbefore provided for shall be cumulative of other remedies allowed by law.

All agreements, covenants, duties, rights and powers herein made, imposed, granted or mentioned, which are binding upon or applicable to either or both of the parties hereto, shall also be binding upon and applicable to the heirs, legal representatives, successors and assigns of such party or parties.

IN WITNESS WHEREOF, The first party has signed, sealed and delivered these presents, the day and year first above written.

All signatures, Signed, sealed and delivered in the presence of:

J. C. BURNS JR.  
T. AYER HATCHER  
Notary Public,  
State of Ga.  
at Large

HERBERT I. SMART	(SEAL)
CLAUDE M. TRAWICK	(SEAL)
W. W. HACKETT	(SEAL)

as trustees for  
the Vineville  
Presbyterian Church

Recorded Jan. 5, 1940  
LL.

# EXHIBIT O

GEORGIA, BIBB COUNTY

THIS INDENTURE made this 15th day of September, 1956, between VINEVILLE PRESBYTERIAN CHURCH, of Bibb County, Georgia, hereinafter called Grantor, which term, wherever herein used, shall include the heirs, executors, administrators and assigns of such Grantor, and HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF MACON, a body corporate under the laws of the United States having its principal office and place of business in the City of Macon, Bibb County, Georgia, hereinafter called Grantee, which term, wherever herein used, shall include its successors and assigns;

WITNESSETH, That Grantor, in consideration of the sum of Twenty-One Thousand and 00/100 Dollars in hand paid by Grantee, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign and convey to Grantee: All that certain real estate in Bibb County, Georgia in the Vineville District, beginning at a point where Culver Street and Vineville Avenue intersect, and running along East side of Culver Street a distance of 210 feet, more or less, to an alley; thence along said alley a distance of 100 feet; thence at right angles to said alley along a line parallel to Culver Street a distance of 210 feet, more or less, to Vineville Avenue; thence along said Vineville Avenue a distance of 100 feet to point of beginning; said lot being a part of the land which was conveyed to Richard H. Moore and John L. Culver by J. O. Moore by deed dated January 16, 1899, and recorded in Book 96, folio 663, Clerk's Office, Bibb Superior Court, and also being the same land which was conveyed to Vineville Presbyterian



Church by quit-claim deed dated June 19, 1915, by T. S. Lowry and G. T. Kinnett and recorded in Book 192, folio 725, said clerk's office.

GEORGIA INTANGIBLE TAX  
PAID

\$63.00

9-15-56

Dan D. Dunwody  
Tax Collector/Commissioner  
Bibb County

This conveyance includes, in addition to said real estate, all air conditioning units, heating, plumbing, expressly including all heaters and tanks, lighting fixtures, screens, blinds and all equipment of every kind now or hereafter attached or used in connection with improvements on said real estate, it being the intention of Grantor that all of such items shall be treated as a part of said real estate.

To have and to hold all of said property, together with all rights, members and appurtenances thereof, to Grantee in fee simple, and Grantor warrants that he is the owner thereof, has a good title thereto, and a right to convey the same and that it is unencumbered and he will forever defend the title of Grantee against the lawful claims of all persons whomsoever.

This instrument is a deed passing title and is made under the provisions of the laws of the State of Georgia to secure a debt evidenced by a note of even date herewith made by Grantor to Grantee for the principal sum of Twenty-One Thousand and 00/100 Dollars (\$21,000.00), payable in Sixty (60) equal consecutive monthly in-

stallments of Three Hundred Ninety-Six and 31/100 Dollars (\$396.31), beginning October 15, 1956.

This instrument shall secure the indebtedness herein described and any extensions or renewals thereof in whole or in part, whether evidenced by new notes, extension agreements or otherwise, the obligation to pay attorneys' fees as provided in any such note or agreement and also any other advances which may be made by Grantee to or on behalf of Grantor and any other indebtedness by Grantor to Grantee however the same may be created.

Grantor may prepay all or any part of the indebtedness hereby secured without penalty except that if the amount prepaid in any calendar year exceeds twenty per cent (20%) of the original principal amount of this indebtedness, Payee may require the payment of not more than six (6) months' advance interest on such excess.

Grantee shall be subrogated to the claims and liens of all persons whose claims or liens are discharged with the proceeds of this loan or any other advances to, or on behalf of, Grantor.

Grantor waives and renounces for himself and family all homestead and exemption rights under the Constitution and laws of this State or the United States.

Grantor agrees that he will promptly pay all taxes, assessments, other governmental levies, and charges of every character that may accrue against said property; that he will keep the house on said premises insured by a policy containing fire and lightning and extended coverage insurance and any other coverage required by Grantee in at least the amount of his indebtedness to Grantee in an insurance company or companies acceptable to Grantee with loss payable clause in favor of, and in form acceptable to, Grantee; that the policies will be deposited with Grantee; that if a loss occurs he will give immediate written notice to Grantee and Grantee may

make proof of loss if not made promptly by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Grantee instead of to Grantor and Grantee jointly, and the proceeds may be applied by Grantee at its option to the reduction or payment of the indebtedness hereby secured or to the restoration or repair of the damaged property, or partly to both; that he will maintain and keep the premises and all improvements thereon in first class condition and repair and will not commit or permit waste. Grantee may require life insurance to be procured and assigned to it by Grantor as additional collateral and Grantor agrees that he will deliver the policies to Grantee and that he will promptly pay all premiums thereon as they become due.

If required by Grantee, however, Grantor shall deposit monthly in advance, in addition to the installments herein required to be paid, one-twelfth of the yearly total reasonably estimated by Grantee to be required to pay all taxes, assessments, insurance, sewer rent, if any, and other charge against said property and life insurance premiums, in which event such charges shall be paid by Grantee from such fund, but any deficiency shall be immediately paid by Grantor on demand, and the same shall bear interest at 8% per annum from the date of demand. If Grantee has not required such deposits and Grantor shall default in paying any of said taxes or assessments or providing or paying for such insurance or making such repairs, Grantee may, at its option, pay such taxes or assessments or procure or pay for such insurance or make such repairs and all expenses so incurred shall be payable on demand, shall be payable on demand, shall be secured by this deed, and shall bear interest at 8% per annum from the time of disbursement by Grantee until repayment by Grantor.

Should Grantor default in the prompt payment of any amount secured hereby, or in the due and prompt observance by Grantor of any covenant or undertaking herein contained, and such default continue for thirty (30) days, all amounts secured hereby shall, at the option of Grantee, become immediately due and payable, time being of the essence of this agreement, and Grantee may enter upon said premises, take possession and collect the rents and profits thereof, and before or after entry may sell said described property or any part thereof in one or more sales on any day, whether legally designated for public sales or not, at public auction before the courthouse door in the county in which the property or any part of the same is situated to the highest bidder for cash, first giving notice of the time and place of said sale or sales by advertisement thereof once a week for four weeks in some newspaper published in said county, all other notice being hereby waived by Grantor, and thereupon Grantee may execute and deliver to the purchaser or purchasers sufficient conveyance of said property in fee simple, divesting all rights of Grantor, which conveyance shall contain recitals as to the happening of any default upon which the exercise of the power of sale depends, and said recitals shall be binding and conclusive upon Grantor. The power of sale shall not be exhausted until all of said property has been sold and a deed delivered to and accepted by the purchaser. Grantee, its agents, representatives, successors or assigns, may bid and purchase at any such sale and collect the proceeds thereof, which shall be applied: first, to pay the costs and expenses of said sale and the expenses of protecting the property; second, to pay the indebtedness hereby secured; and third, to pay the surplus, if any, to Grantor.

Grantor covenants that upon commencement of any legal proceeding to realize on the security of this instrument, Grantee may apply for and shall be entitled as a matter of right to the appointment of a receiver to take

charge of and hold said property and the rents, issues and profits thereof for the benefit of Grantee without consideration of the value of the property conveyed as security or the solvency of any person or persons obligated for the payment of such amounts, all without notice to Grantor.

The powers herein granted are coupled with an interest and are irrevocable by death or otherwise. All powers, rights and options herein granted are cumulative of any remedies to which Grantee may otherwise be entitled under the laws of Georgia.

IN WITNESS WHEREOF, Grantor has hereunto set its hand and affixed its seal, the day and year above written.

VINEVILLE  
PRESBYTERIAN  
CHURCH

By:.....(SEAL)  
Herbert I. Smart

.....(SEAL)  
Robert E. Lucas

.....(SEAL)  
A. Emmett Barnes, III

TRUSTEES

Signed, sealed and delivered in the presence of

FRANCES S. HIGDON

GEORGE E  
Notary Public, Georgia, Bibb County

NOTARY PUBLIC, GEORGIA, RESIDING IN  
BIBB COUNTY  
MY COMMISSION EXPIRES JUNE 30, 1958

GEORGIA, Bibb County,  
Clerk's Office Superior Court  
Filed for Record Sep. 15,  
1956 at 12<sup>10</sup> o'clock pm.  
Recorded Sep 17, 1956  
Clerk



## EXHIBIT P

## STATE OF GEORGIA, BIBB COUNTY.

IN CONSIDERATION OF Sixty-five Thousand Dollars to it paid, receipt of which is hereby acknowledged, VINEVILLE PRESBYTERIAN CHURCH, a corporation of the County of Bibb and State of Georgia hereinafter referred to as Grantor, has this day bargained and sold and does hereby transfer and convey unto MACON FEDERAL SAVINGS AND LOAN ASSOCIATION, a body corporate under the laws of the United States having its principal office and place of business in the City of Macon, County of Bibb and State of Georgia, its successors and assigns, hereinafter referred to as Grantee, the following described property, to-wit:

## TRACT No.1

All that tract or parcel of land in the City of Macon, Bibb County, Georgia, and being part of the Culver Property as shown by a plat of record in Book 130, folio 817, Clerk's Office Bibb Superior Court; said property being more particularly described with reference to said plat as beginning at the northeast intersection of Vineville Avenue and Culver Street, and from said beginning point running in a generally southeasterly direction a distance of one hundred eighty-one (181) feet along the northerly right of way line of Vineville Avenue; thence running in a northerly direction a distance of two hundred sixty-four (264) feet to a 12-foot alley; thence in a westerly direction a distance of two hundred twelve and two-tenths (212.2) feet to Culver Street; thence in a southerly direction a distance of two hundred ten (210) feet, more or less, to the right of way line of Vineville Avenue and the point of beginning.

## TRACT No. 2

All that tract or parcel of land in the City of Macon, Bibb County, Georgia, being a part of the Culver Property, and being more particularly described as follows: Beginning at a point two hundred two (202) feet from the northeast corner of Vineville Avenue and Culver Street at a point where the northerly line of a 12-foot alley intersects Culver Street, and running thence northward along the east line of Culver Street seventy (70) feet; thence eastward at right angles a distance of two hundred twenty-five and five-tenths (225.5) feet; thence at right angles toward Vineville Avenue seventy (70) feet to a 12-foot alley; thence westward along said alley two hundred thirteen (213) feet to the starting point.

GEORGIA INTANGIBLE

Tax Paid

\$195.00

November 21, 1963

DAN D. DANWODY

Tax Collector—Commissioner  
Bibb County

This conveyance includes all air conditioning units, heating, plumbing (both hot and cold water and expressly covering heaters and tanks) and lighting fixtures, radio and television aerals and antennae and equipment and appliances of all kinds, now or hereafter attached to or used in connection with improvements on real estate herein described.

Grantee, its successors and assigns, to have and to hold said property and its appurtenances forever in Fee Simple.

Grantor warrants the title to said described property unto Grantee, its successors and assigns, against the lawful claims of all persons whomsoever.

This conveyance is intended to operate as provided in Sections 67-1301, 67-1307, 67-1501, and 37-607 of the Code of Georgia of 1933, and Acts of the General Assembly amendatory thereto, in regard to the sales of property to secure debts, and to pass the title to the property described unto Grantee, the debt hereby secured being one certain principal note of even date herewith and payable to the order of said MACON FEDERAL SAVINGS AND LOAN ASSOCIATION at the office of said Association in the City of Macon, State of Georgia, for the sum of Sixty-five Thousand Dollars, payable in 120 equal montly installments of \$697.40 each, beginning January 1, 1964, each installment being (a) a payment of interest for one month on the decreasing balance of principal of said sum; and (b) a payment on account of said principal sum, together with all extensions and renewals thereof in whole or in part, whether evidenced by new note, extension agreement or otherwise, and together also with the other obligations hereinafter described or referred to.

This instrument shall further secure any and all amounts, not secured by a lien on or title to other property, which by contract Grantor hereafter becomes indebted to Grantee prior to the payment of the last maturing installment of the above described note or any extension or renewal thereof where the evidence of indebtedness or other instrument executed by Grantee recites that it is secured by this instrument, provided that no such amount for which Grantor may hereafter become indebted to Grantee shall be secured hereby if such indebtedness arises subsequent to a sale by Grantor of the property hereby conveyed, or in the event a lien upon said property junior to this instrument has been created by Grantor, where written notice of such sale or lien has been given Grantee prior to the creation of such subsequent indebtedness.

Grantee shall be subrogated to all rights and liens of any person whose charge or lien shall be paid off out of proceeds of the indebtedness above described.

Grantor agrees to keep said personal property and all improvements now or hereafter erected on said land in good condition and repair and not to commit or permit waste; to promptly pay as same become due all taxes and assessment that may be liens on property conveyed hereby and to furnish Grantee, if demanded, evidence of such payment; and to keep all said property and improvements fully insured against fire and storm, and against war risk if demanded, for the benefit of Grantee, in such manner, amounts and companies as may be satisfactory to Grantee, and promptly deliver policies of such insurance and renewals thereof, to said Grantee, with evidence of payment of premiums.

In the event Grantor, his personal representative or assign, shall fail to pay any taxes or assessments that may be liens upon said property or shall fail to so deliver policies of insurance and renewals thereof, with evidence of payment of premiums thereon, then Grantee or the holder of this deed may pay such unpaid taxes and assessments and may have such insurance written and pay the premiums thereon; and all amounts so paid with interest at eight per centum per annum shall be secured by this deed and shall be repaid to the holder of this deed within ten days after such payment and all of this irrespective of whether or not a sale of the property has been made by Grantor or a junior lien created by Grantor thereon and notice of such sale or lien given to Grantee.

And should Grantee receive any money for damages covered by insurance, such money may be retained and applied toward the payment of any amount hereby secured or may be paid over, either whole or in part, to Grantor to enable Grantor to repair or replace improvements, or for any other purpose, without affecting the lien



of this deed for the full amount secured hereby before such damage or such payment over took place.

Should any tax be imposed on this instrument or on the indebtedness secured hereby, or should any amount secured hereby or interest thereon, or any premiums, taxes or assessments not be paid when due, or upon the actual or threatened demolition or removal of any property or of any improvements now or hereafter erected on premises conveyed hereby, or in case of default in the due observance of any covenant herein by Grantor, all amounts secured hereby shall, at the option of Grantee, at once become due and payable, time being of the essence of the contract.

Whenever the debt secured hereby or any part thereof shall be in default, either according to the tenor of any note or by virtue of any condition, herein, Grantee, its agent or legal representative, may enter upon and take possession of said property, and collect the rents and profits thereof and apply the same to the payment of any indebtedness secured hereby.

And furthermore, in case of default, and whether or not possession be taken, Grantee, its agent or legal representative, or the Sheriff of the County in which said property of any part thereof is located may, and is hereby authorized to, sell before the Courthouse door in the County in which said property or any part thereof is located, to the highest bidder for cash, all or any part of said property, in one or more sales (the power of sale herein contained not to be exhausted until all of said property has been sold), after advertising the time, place and terms of sale in any newspaper published in the County in which such sale is to be had once a week for four weeks; with the right to Grantee, its agent or legal representative, to become the purchaser at such sale; the proceeds of said sale to be applied, first to the payment of all amounts secured hereby with interest, all expenses of

sale, unpaid assessments and taxes, and any remainder to be paid to Grantor or to his personal representative or assignee.

And Grantee, its agent or legal representative, or the Sheriff aforesaid, is authorized to make to any purchaser of said property Fee Simple title to the same, thereby divesting out of Grantor all right, title and equity that said party has, or may hereafter have, in and to said property, and vesting the same in the purchaser thereof; and the purchaser may enter upon the premises and take possession of all improvements thereon and the property herein conveyed and dispossess the Grantor and any and all persons in possession under Grantor, said Grantor agreeing that possession will be surrendered without let or hindrance of any kind.

And Grantee upon complaint filed or other legal proceeding being commenced to realize on the security afforded by this deed may apply for and shall as a matter of right and without consideration for the value of the property conveyed as security for the amounts due to Grantee or of the solvency of any person or persons obligated for the payment of such amounts and without notice, be entitled to the appointment by any competent court of a receiver to take charge of and hold the property hereby conveyed and the rents, issues and profits thereof, for the benefit of Grantee.

Wherever the word "Grantor" is used herein the same shall be construed to include, when appropriate, either gender and both singular and plural, as shall also the pronouns used herein, which are applicable thereto, and the grammatical construction of sentences shall conform thereto.

Any transferee hereof, his agent or legal representative, shall have all the rights, powers, privileges and options hereby vested in Grantee; and any successor to



Grantor in title to the property hereby conveyed shall be charged with the performance of all ocvenants made by Grantor herein, and shall be responsible for all duties and obligations herein imposed on Grantor.

But the foregoing powers for realizing on this security are cumulative only of the remedies to which said Grantee, its successors and assigns, may be entitled under the laws of Georgia.

WITNESS the hand and seal of Grantor, this 20th day of November, 1963.

Signed, sealed and delivered in the presence of: As to A. E. Barnes, III and Herbert Smart in Bibb Co., Ga.

.....  
MARY J. BAYER

.....  
FRANKLIN L. COLSTON  
Notary Public, State of Georgia,  
Residing in Bibb County, Ga.

(See below for attestation as to R. E. Lucas)

VINEVILLE  
PRESBYTERIAN  
CHURCH

By .....(L.S.)  
A. E. BARNES III  
Trustee

.....(L.S.)  
TRUSTEE

.....(L.S.)  
R. E. LUCAS  
Trustee

Clerk's Office, Bibb Superior Court

Filed for Record Nov. 21,  
Nov. 22, 1963 at 10:40 M.

Recorded in Book 913 Folio  
435

.....Clerk

As to R. E. Lucas in Lowndes County, Georgia.

.....  
CORINNE PETERSON

.....  
R. E. BRADFORD  
Notary Public, State of Georgia  
Residing in Lowndes County.  
Notary Public, Lowndes County, Georgia  
My Commission Expires Aug. 19, 1966.

## VERIFICATION

GEORGIA, BIBB COUNTY.

Comes now CHARLES T. WOLF, who, after first being duly sworn, deposes and says that he is one of the defendants named in the within suit and that the facts set forth in the foregoing Answer are true and correct.

CHARLES T. WOLF  
Charles T. Wolf

Sworn to and subscribed before me  
this 17th day of May, 1976.

MRS. EMMA J. RICHARDSON  
*Notary Public, State of Georgia*  
Residing in Bibb County

## CERTIFICATE OF SERVICE

GEORGIA, BIBB COUNTY.

I, W. WARREN PLOWDEN, JR., one of counsel of record for the defendants, do hereby certify that I have this day served the within and foregoing Answer of Defendants upon the plaintiffs by hand delivering copies of same to their attorneys of record as follows:

Messrs. John B. Harris, Jr. and T. Reese Watkins  
Harris, Watkins, Taylor & Davis  
1200 Georgia Power Building  
Macon, Georgia 31201

and

Messrs. H. T. O'Neal, Jr. and Manley F. Brown  
Adams, O'Neal, Hemingway, Kaplan, Stone & Brown  
1000 American Federal Building  
Macon, Georgia 31201

This 17th day of May, 1976.

W. WARREN PLOWDEN, JR.  
W. Warren Plowden, Jr.

## STIPULATION OF FACTS, FILED 3/14/77

IN THE SUPERIOR COURT OF BIBB COUNTY  
STATE OF GEORGIA

R. W. JONES, et al.,

*Plaintiffs*

*v.*

Civil Action  
No. 45787 D-2

CHARLES T. WOLF, et al.,

*Defendants*

## STIPULATION OF FACTS

Come now all of the parties in the above-captioned case and, by and through their counsel of record, stipulate as hereinafter set forth:

The Vineville Presbyterian Church was organized in the year 1904. On April 14 of that year some 48 citizens of Bibb County, Georgia submitted a petition to the Macon Presbytery of Augusta-Macon Presbytery of the Presbyterian Church in the United States seeking to be organized into a Presbyterian Church. Shortly thereafter, the petition was granted and the Vineville Presbyterian Church was established as a Member-Unit of the Augusta-Macon Presbytery of the Presbyterian Church in the United States.

The Presbyterian Church in the United States has what is generally known as a "connectional" form of government and the structure of the Presbyterian Church in the United States is set forth in the "Book of Church Order", the "Fourteenth Printing 1972", being the Book in effect during the year 1973, a copy of which is hereto attached, marked Exhibit "A", and by reference made a part of these Stipulations.

Title to the property involved in this litigation, which plaintiffs contend defendants are illegally holding and enjoying, to the exclusion of plaintiffs, was acquired by instruments of conveyance, copies of which are hereto attached, marked Exhibits "B", "C", "C-1", "D", "E", "F", "G", "H", and "I", and by reference made a part hereof.

Vineville Presbyterian Church is an incorporated body, having been incorporated on April 29, 1915, pursuant to a charter granted by the Superior Court of Bibb County, Georgia, a copy of said charter being hereto attached, marked Exhibit "J", and by reference made a part hereof; said charter was revived and renewed according to Exhibit "K", hereto attached and made a part hereof.

Since the year 1908, the congregation of Vineville Presbyterian Church has dealt with the property which is the subject matter of this litigation as indicated by deeds to secure debt hereto attached, marked Exhibits "L", "M", "N", "O", "P", and "Q", and by reference made a part hereof.

On May 26, 1973, the Vineville Presbyterian Church was a Member-Unit of the Augusta-Macon Presbytery of the Presbyterian Church in the United States. On said date, plaintiffs and the class they represent and defendants and the class they represent were members of the Vineville Presbyterian Church.

On May 27, 1973, the members of the class represented by the defendants submitted to the congregation of the Vineville Presbyterian Church, at a time when a quorum was present, a resolution, a copy of which is hereto attached, marked Exhibit "R", and by reference made a part hereof. The resolution was adopted with 165 members voting in favor of the resolution and 94 voting against it. The defendants and the class they represent



are comprised of the 165 members voting in favor of the resolution. The plaintiffs and the class they represent are comprised of the 94 members voting against the resolution.

Thereafter, on May 27, 1973, defendant, F. Lamar Fleming, on behalf of the defendants, caused the Augusta-Macon Presbytery to be notified, among other things, of the resolution and vote thereon, all as set forth in a copy of said notice attached hereto, marked Exhibit "S", and by reference made a part hereof. Defendant, Henry M. Hope, Jr., was Pastor of Vineville Presbyterian Church on said date of May 27, 1973, and he caused a letter to be written and signed by him, and delivered to the addressee, a copy thereof being hereto attached, marked Exhibit "T", and by reference made a part hereof. The action taken by the Augusta-Macon Presbytery appears in a document hereto attached, marked Exhibit "U", and by reference made a part hereof.

Subsequently, the defendants and the class they represent, of the Vineville Presbyterian Church, by unanimous vote, united with the Central Georgia Presbytery of the Presbyterian Church in America.

The defendants and the class they represent have at all times since May 27, 1973, retained possession, dominion and control of all property and assets of the Vineville Presbyterian Church, to the complete exclusion of utilization of any of said property by plaintiffs, and the class they represent, as a local unit of the Presbyterian Church in the United States, but not otherwise. At all times since May 27, 1973, plaintiffs and the class they represent have met and carried on their church activities at various locations other than 2193 Vineville Avenue.

The defendants have stricken the names of plaintiffs and the class they represent from the rolls of Vineville Presbyterian Church and have so notified plaintiffs and

the class they represent, in writing, all as appears by a document hereto attached as Exhibit "V", and by reference made a part hereof, said attached document being typical of notices sent to the plaintiffs and all of the class they represent.

The Book of Church Order of the Presbyterian Church in the United States has had a publication thereof subsequent to the Book of Church Order "Fourteenth Printing 1972", hereinbefore referred to, which incorporated "Changes Made at the 112th General Assembly"; the subsequent publication thereof being "Fifteenth Printing 1975", incorporating "Changes Made at the 115th General Assembly", wherein a new section was added to Chapter 4, entitled "The Organizing of a Particular Church", the new section being as follows:

"¶ 4-2. The relationship to the Presbyterian Church U.S. of a particular church can be severed only by constitutional action on the part of the presbytery of which it is a member."

A copy of revised Chapter 4 of the Book of Church Order is hereto attached, marked Exhibit "W", and by reference made a part hereof.

The United Presbyterian Church in the United States of America (UPCUSA) is a Presbyterian denomination which is not connected with the Presbyterian Church in the United States (PCUS). The UPCUSA denomination has its Book of Church Order, which contains a chapter dealing with the property of local churches. This chapter is denominated Chapter XXXII, and a copy of this chapter is attached hereto and marked Exhibit "X".

The United Methodist Church is a connectional denomination with churches throughout the United States. It has no connectional affiliation with the PCUS. The United Methodist Church has a Book of Discipline by

which it is governed, and Chapter 6 of said Book deals with church property. Section 1 of Chapter 6 is attached hereto and is marked Exhibit "Y".

The pending law suit between the parties is a proper class action in which the named plaintiffs will fairly insure the representation of all members of their class, and the named defendants will fairly insure the representation of all members of their class.

The defendants do not claim any right of possession of the Church edifice and other Church assets by virtue of any claim or contention arising under or by virtue of §§22-5504 or 5506 of the Georgia Code Annotated.

In lieu of making a new party defendant, the parties hereto agree that Vineville Presbyterian Church, a non-profit corporation of the State of Georgia, shall be bound by any judgment rendered in this case affecting the named defendants to the same extent as if Vineville Presbyterian Church, a non-profit corporation of the State of Georgia, had been made a party to the litigation.

The allegations of fact contained in the complaint which are admitted in the answer, together with the facts established by this Stipulation and its attached exhibits, to the extent that the same are determined to be relevant and material by the Court, shall form the basis for a decision by the Court in this case.

The pleadings in this case, together with this Stipulation and its attached exhibits, shall form the basis for a decision by the Court in this case. It is agreed that this Stipulation shall be submitted to the Court for approval, that upon such approval being endorsed hereon by an order of the Court, the same shall be filed of record in the case, and the Court may render a final decision without the intervention of a jury, based on the pleadings and this Stipulation, and such additional evidence, if any, as may be required by the Court.

SO STIPULATED, this 14th day of March, 1977.

HARRIS, WATKINS, TAYLOR  
& DAVIS

By: JOHN B. HARRIS, JR.  
John B. Harris, Jr.

P.O. Address:

1200 Georgia Power  
Building  
Macon, Georgia 31201

T. REESE WATKINS  
T. Reese Watkins

*Attorneys for Plaintiffs*

ADAMS, O'NEAL, HEMINGWAY,  
KAPLAN, STONE & BROWN

By: H. T. O'NEAL, JR.  
H. T. O'Neal, Jr.

P.O. Address:

1000 American Federal  
Building  
Macon, Georgia 31201

MANLEY F. BROWN  
Manley F. Brown

*Of Counsel for Plaintiffs*

JONES, CORK, MILLER  
& BENTON

By:  
Wallace Miller, Jr.

P.O. Address:

500 First National  
Bank Building  
Macon, Georgia 31201

W. Warren Plowden, Jr.

*Attorneys for Defendants*

SELL, COMER & POPPER

By:

Ed Sell, Jr.

P.O. Address:

1414 Georgia Power  
Building  
Macon, Georgia 31201

*Attorneys for Defendants*

# ORDER OF THE COURT

The above and foregoing Stipulation having been signed by counsel of record for all parties, and said Stipulation having been submitted to the Court for sanction and for an Order that the same be filed of record;

IT IS, UPON CONSIDERATION, ORDERED that said Stipulation be approved and sanctioned, and it is ordered that the same be filed as part of the record in this case.

So ORDERED, this       day of March, 1977.

James B. O'Connor, Judge Presiding  
of Bibb Superior Court



[Exhibit A appears above as Complaint Ex. A; see p. 11,  
above]

\* \* \* \*

[Exhibit B appears above as Answer Ex. A; see p. 247,  
above]

\* \* \* \*

[Exhibit C appears above at Answer Ex. B; see p. 249,  
above]

\* \* \* \*

[Exhibit D appears above as Answer Ex. C; see p. 251,  
above]

\* \* \* \*

[Exhibit E appears above as Answer Ex. D; see p. 253,  
above]

\* \* \* \*

[Exhibit F appears above as Answer Ex. E; see p. 256,  
above]

\* \* \* \*

[Exhibit G appears above as Answer Ex. F; see p. 261,  
above]

\* \* \* \*

[Exhibit H appears above as Answer Ex. G; see p. 264,  
above]

\* \* \* \*

[Exhibit I appears above as Answer Ex. H; see p. 268,  
above]

\* \* \* \*

[Exhibit J appears above as Answer Ex. I; see p. 271,  
above]

\* \* \* \*

[Exhibit K appears above as Answer Ex. J; see p. 274,  
above]

\* \* \* \*

[Exhibit L appears above as Answer Ex. K; see p. 278,  
above]

\* \* \* \*

[Exhibit M appears above as Answer Ex. L; see p. 282,  
above]

\* \* \* \*

[Exhibit N appears above as Answer Ex. M; see p. 286,  
above]

\* \* \* \*

[Exhibit O appears above as Answer Ex. N; see p. 294,  
above]

\* \* \* \*

[Exhibit P appears above as Answer Ex. O; see p. 299,  
above]

\* \* \* \*

[Exhibit Q appears above as Answer Ex. P; see p. 306,  
above]

\* \* \* \*

[Exhibit R appears above as Complaint Ex. B; see p. 228,  
above]

\* \* \* \*

[Exhibit S appears above as Complaint Ex. D; see p. 233,  
above]

\* \* \* \*

[Exhibit T appears above as Complaint Ex. E; see p. 234,  
above]

\* \* \* \*

[Exhibit U appears above as Complaint Ex. F; see p. 235,  
above]

\* \* \* \*

## EXHIBIT V

## VINEVILLE PRESBYTERIAN CHURCH

2193 Vineville Avenue

Macon, Georgia

June 3, 1976

Mr. and Mrs. Dan Danwody, Jr.,  
Dan, III, Dale, and Doug  
7071 Malvern Hill Drive  
Macon, Georgia 31204

Dear Mr. and Mrs. Danwody,  
Dan, III, Dale, and Doug:

By action of the Session of the Vineville Presbyterian Church, Inc., 2193 Vineville Avenue, Macon, Georgia; and in conformance with the applicable provisions contained in the *Book of Church Order* of the Presbyterian Church in America, the names of those persons listed above have been removed from the membership roll of said church.

Sincerely,

CHARLES T. WOLF  
Charles T. Wolf, Jr.,  
*Chairman*  
Session's Commitment  
Committee

CTW, Jr./ayp

**EXHIBIT W**

able, should be convened by the Session on the Lord's Day, and at other suitable times, for prayer, praise, the reading and expounding of the Holy Scriptures, and exhortation or the reading of a sermon of some approved Minister. In like manner, Christians in places where there is no church ought to meet regularly for the worship of God.

**CHAPTER 4****The Organizing of a Particular Church**

§ 4-1. A church can be organized only by the authority of Presbytery. The Presbytery may proceed with the organization directly, or through a Commission, or through an Evangelist to whom the Presbytery has entrusted the power to organize churches. In the organizing of a church, the procedure shall be as follows:

(1) Church members shall present evidences of their membership, and applicants for admission to the Church on profession of faith in Christ shall present themselves for examination and baptism as necessary.

(2) These persons shall then be required to enter into covenant, by answering the following questions affirmatively with uplifted hand: "Do you, in reliance on God for strength, solemnly promise and covenant that you will walk together as an organized church, on the principles of the faith and order of the Presbyterian Church in the United States, and that you will be zealous and faithful in maintaining the purity and peace of the whole Church?"

(3) The presiding Minister shall then say: "I now pronounce and declare that you are constituted a church according to the Word of God and the faith and order of the Presbyterian Church in the United

States. In the name of the Father, and of the Son, and of the Holy Spirit. Amen."

(4) Ruling Elders and Deacons shall then be elected, if the way be clear, and steps taken for their instruction, examination, ordination, and installation.

(5) Action shall be taken to secure, as soon as practicable, the regular preaching of the Word and administration of the Sacraments. [See §10-6; 23-4.]

§ 4-2. The relationship to the Presbyterian Church U.S. of a particular church can be severed only by constitutional action on the part of the presbytery of which it is a member.

**CHAPTER 5****Congregational Meetings**

§ 5-1. The Congregation consists of all the communing members on the active roll of a particular church. Only such members in good standing who are present at a congregational meeting are entitled to vote. A Congregation may at its discretion set a minimum age for the voting of communing members in congregational meetings, provided that such age be not more than sixteen.

§ 5-2. The Session shall call a congregational meeting whenever necessary. It shall give public notice at least one week in advance. Only business stated in the notice shall be transacted. The Session shall call a congregational meeting without delay when requested in writing by one-fourth of the congregation.

§ 5-3. If the church has not more than one hundred members on the active roll, the quorum of a congregational meeting shall consist of one-fourth of such members. If the church has more than one hundred members



on the active roll, the quorum shall be one-tenth of such members, but not less than twenty-five.

§ 5-4. The Pastor shall be the Moderator of congregational meetings by virtue of his office. If it should be impracticable or inexpedient for him to preside, or if there is no Pastor, the Session shall appoint one of its number to call the meeting to order and to preside until the congregation shall elect its presiding officer, who shall be a Minister of the Presbyterian Church in the United States or any adult member of that particular church. [See §25-6.]

§ 5-5. A Clerk shall be elected by the congregation to serve at that meeting or for a definite period, or the Clerk of the

## EXHIBIT X

### CHAPTER XXXII

#### Of Incorporation and of Trustees

62.01 1. THE GENERAL ASSEMBLY shall cause a corporation to be formed and maintained such as will enable it to receive, hold, and transfer property, and to facilitate the management of its corporate affairs in such manner as may be directed by the General Assembly from time to time.

62.02 2. Each synod shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the synod from time to time and according to this Constitution.

62.03 3. Each presbytery shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the presbytery from time to time and according to this Constitution.

62.04 4. Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular

church from time to time and according to this Constitution.

62.05 5. Only active members of a particular church shall be permitted to vote at meetings of the church corporation.

62.06 6. The duties and powers of the trustees of a particular church shall not infringe upon the duties and powers of the session. In accordance with the tradition and will of the particular church, the duties and powers of the trustees may be those described in either one or the other of the two paragraphs following:

62.061 (1) In a church which elects deacons to perform all the duties set forth in Form of Government, Chapter X, Section 5, the duties and powers of the trustees shall be to receive, hold, and transfer property, including the investment and reinvestment of permanent funds entrusted to them, being subject always to the authority and instructions of the corporation, or of the congregation if the church be not incorporated.

62.062 (2) In a church which does not elect deacons to perform all the duties set forth in Form of Government, Chapter X, Section 5, the duties and powers of the trustees shall be those set forth in Section 6(1) above, together with such other duties and powers set forth in Form of Government, Chapter X, Section 5, as the particular church may determine to be the duties of the trustees rather than of the deacons.

62.07 7. The term "trustees," as it is used in this Form of Government in relation to a particular church, designates such officers as shall be elected by the church to fulfill the requirements of civil law in respect to the church corporation, whether or not they are called trustees of the civil law. Trustees (both men and women) of a particular

church shall be chosen at such time and in such manner as may be required by civil law, with two further conditions: (1) they shall be active members of said church, and (2) the provisions of Chapter XVII relating to the nomination, election, and tenure of ruling elders and deacons shall apply with equal force to trustees, except as the civil law may otherwise require; provided, however, that any trustee in office on May 23, 1952, may be retained in office for that person's term then current or any extension thereof, at the discretion of the congregation; and further provided, that condition (1) shall not apply to The National Presbyterian Church of Washington, D.C., wherein the General Assembly, when incorporating The National Presbyterian Church, specifically provided otherwise.

62.08 8. Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or the bylaws of the particular church and to the permission of presbytery as herein provided.

The trustees of a particular church shall exercise any other powers or authorities vested in them by civil law in conformity with the actions of the session as conveyed to them from time to time. They shall also perform such other duties relating to the property or finances of the church as may be delegated to them by the session. The trustees shall submit a financial statement of all matters committed to them and a report of their proceedings to the session for review at least once a year and at other times upon request of the session.

While trustees, like other boards and bodies of a particular church, hold authority subordinate to that of

the session, the office of trustee is one of dignity and responsibility, requiring ability and devotion. Trustees, upon their election, shall be properly recognized at a service of worship and set apart to the discharge of their responsibility by prayer.

62.09 9. Unless otherwise provided for, all particular church corporation meetings shall be called by giving public notice thereof from the pulpit on the two successive Sundays next preceding the day of such meeting.

62.10 10. Voting by proxy shall not be permitted except in those states where voting by proxy in religious corporations is expressly required by statute.

62.11 11. Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.

62.12 12. A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.

## EXHIBIT Y

### CHAPTER SIX

#### Church Property

##### Section I. All Titles—in Trust.

¶ 1401. The United Methodist Church is organized as a **connectional structure**, and titles to all properties held at General, Jurisdictional, Annual, or District Conference levels, or by a local church or charge, or by an agency or institution of the Church, shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline.

¶ 1402. The word "Methodist" is not by our approval or consent to be used as, or as a part of, a trade name or trademark or as a part of the name of any business firm or organization, except by corporations or other business units created for the administration of work undertaken directly by The United Methodist Church.

¶ 1403. *Trust Clauses in Deeds.*—1. Except in conveyances which require that the real property so conveyed shall revert to the grantor if and when its use as a place of divine worship has been terminated, all written instruments of conveyance by which premises are held or hereafter acquired for use as a place of divine worship for members of The United Methodist Church or for other church activities shall contain the following trust clause:

*In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the United Methodist ministry and members of The United Methodist Church; subject to the Discipline, usage, and ministerial appointments of said church as from time to time authorized and declared by the General Conference and by the*



*Annual Conference within whose bounds the said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in said premises.*

2. All written instruments by which premises are held or hereafter acquired as a parsonage for the use and occupancy of the ministers of The United Methodist Church shall contain the following trust clause:

*In trust, that such premises shall be held, kept, and maintained as a place of residence for the use and occupancy of the ministers of The United Methodist Church who may from time to time be entitled to occupy the same by appointment; subject to the Discipline and usage of said church, as from time to time authorized and declared by the General Conference and by the Annual Conference within whose bounds the said premises are situated. This Provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in said premises.*

3. In case the property so acquired is to be used for both a house of worship and a parsonage, the provisions of both trust clauses specified in §§1 and 2 above shall be inserted in the conveyance.

4. In case the property so acquired is not to be used exclusively for a place of worship, or a parsonage, or both, all written instruments by which such premises are held or hereafter acquired shall contain the following trust clause:

*In trust, that said premises shall be kept, maintained, and disposed of for the benefit of The United Methodist Church and subject to the usages and the Discipline of The United Methodist Church. This provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in said premises.*

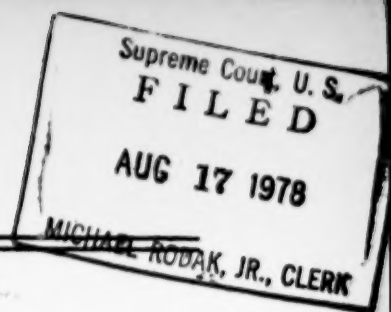
5. However, the absence of a trust clause stipulated in §§1, 2, 3, or 4 above in deeds and conveyances previously

executed shall in no way exclude a local church or church agency from or relieve it of its connectional responsibilities to The United Methodist Church. Nor shall it absolve a local congregation or church agency or Board of Trustees of its responsibility and accountability to The United Methodist Church; *provided* that the intent and desires of the founders and/or the later congregations or Boards of Trustees are shown by any or all of the following indications: (a) the conveyance of the property to the trustees of a local church or agency of any predecessor to The United Methodist Church; (b) the use of the name, customs, and polity of any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; (c) the acceptance of the pastorate of ministers appointed by a bishop or employed by the superintendent of the District or Annual Conference of any predecessor to The United Methodist Church.

¶ 1404. Nothing in the Plan of Union at any time after the union is to be construed so as to require any existing local church of any predecessor denomination to The United Methodist Church to alienate or in any way to change the title to property contained in its deed or deeds at the time of union, and lapse of time or usage shall not affect said title or control. Title to all property of a local church, or charge, or agency of the Church shall be held subject to the provisions of the Discipline, whether title to the same is taken in the name of the local church trustees, or charge trustees, or in the name of a corporation organized for the purpose, or otherwise.

¶ 1405. Subject to and in accordance with the laws of the state, province, or country, the governing body of any church unit or agency owning land in trust for The United Methodist Church as provided in this Discipline may lease said land for the production of oil, gas, coal, and other minerals, upon such terms as it may deem best; *provided*,

however, that such production shall not interfere with the purpose for which said land is held. The moneys received from such leases as rentals, royalties, or otherwise, shall be used ~~so far as~~ practicable for the benefit of the church unit and for the promotion of the interests of The United Methodist Church. The lessee shall have no control over or responsibility for the payments made under such lease.



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**IN THE  
Supreme Court of the United States**

**OCTOBER TERM, 1978**

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**No. 78-91**

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**R. W. JONES, SR., et al.,  
Petitioners,**

**versus**

**CHARLES T. WOLF, et al.,  
Respondents.**

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**ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA**

---

**BRIEF FOR RESPONDENTS IN OPPOSITION**

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IN THE  
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---

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SUPREME COURT OF GEORGIA

---

BRIEF FOR RESPONDENTS IN OPPOSITION

---

STATEMENT OF THE CASE

Respondents are in general agreement with the Statement of the Case set forth in the Petition for Certiorari. However, we believe that certain points need clarification for a complete understanding of this litigation.

Petitioners leave the impression in their Statement that respondents immediately removed Petitioners' names from the church roll and completely denied

them all access to the church property. (Pet., pp. 3, 5). This is simply not the case. Following the adoption of the Resolution on May 27, 1973, petitioners and the class they represent met and carried on their church activities at various locations in Macon other than 2193 Vineville Avenue. (R. 164). On June 3, 1976, three years after they began carrying on church activities elsewhere and two years after they instituted this litigation, their names were removed from the membership roll. (R. 293). Respondents have denied Petitioners access to the church property, but *only* as a local unit of the Presbyterian Church in the United States.<sup>1</sup>

Petitioners refer to several portions of the Book of Church Order dealing with the powers of various levels in the denomination, church courts and the like. Respondents have no particular quarrel with their description of the structure of the PCUS. However, as we have maintained throughout this litigation, the present law in Georgia concerning church property disputes places no significance on the actions of any church judicatories, but is concerned only with the portions of the general church constitution dealing with church property. Sections 6-1 and 6-2 of the Book

1 This case was not tried in the usual sense but was submitted to the Superior Court of Bibb County upon an agreed Stipulation of Facts. (R. 162-299). The statement by the trial court concerning access, App. 5a, was based on this Stipulation which provides as follows: "The defendants and the class they represent have at all times since May 27, 1973, retained possession, dominion and control of all property and assets of the Vineville Presbyterian Church, to the complete exclusion of utilization of any of said property by plaintiffs, and the class they represent, as a local unit of the Presbyterian Church in the United States, but not otherwise." (R. 164) (emphasis added).

of Church Order deal with the property of a local church, and these are the only sections which were considered by the courts below.<sup>2</sup>

In their description of the opinion of the trial court, Petitioners refer out of context to a portion of the decision dealing with the findings of the Administration Commission, (R. 106) and leave the impression that the trial court improperly sought to resolve a religious issue as to who the denomination can recognize as its true local congregation. Again, this is simply not the case.

In the trial court and before the Supreme Court of Georgia, the Petitioners argued that they are in fact the record trustees of the property of Vineville Presbyterian Church and should be so recognized and declared by the courts. This contention was based on a document recorded in the Superior Court of Bibb County on February 1, 1974 which names the Petitioners, R. W. Jones, Sr., Robert E. Lucas and Ralph Mignerey as trustees of the church's property.<sup>3</sup> This document was in turn based on the findings of the Administrative Commission (R. 106) that Petitioners are recognized by the denomination as the true local congregation of the church.

2 Petitioners refer to Section 6-3 which deals with the situation where a church is dissolved or ceases to exist. There has never been any contention in this litigation that Vineville Presbyterian Church has ceased to exist. To the contrary, Petitioners have steadfastly maintained that they are the "true" church.

3 This document is not a part of the Record, but is referred to in Paragraph 13 of the Complaint (R. 7). Respondents admitted that the instrument was recorded (R. 115) but denied that it had any bearing on the outcome of the litigation and asked the trial court to declare it illegal, void and a nullity.



The trial court based its decision on the Georgia Supreme Court's opinion in *Carnes v. Smith*, 236 Ga. 30, 222 S.E. 2d 322, cert. denied 429 U.S. 868, (1976).<sup>4</sup> It found that there was no basis in the deeds to the property, the applicable Georgia statutes, the Book of Church Order or the church's charter "to indicate any express or implied trust in favor of any group other than the local congregation of VPC". App. 9a. Then, in the paragraph referred to by Petitioners, it dealt with their arguments about the Administrative Commission and the instrument on record and held that these documents could not create any trust relationship "when none previously existed, expressly or by implication . . . ." App. 9a. The trial court did not in any manner seek to limit the power of the denomination to recognize any group it wants to as a part of that body. It merely pointed out that these sorts of after-the-fact deliberations could not change the outcome dictated by *Carnes*.

Respondents do not agree with Petitioners' description of this Court's holding in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), as further discussed in our Argument.

Finally, Petitioners do not appear to have complied with Rule 23(f) of this Court which requires that they set forth the stage in the proceedings below when the federal question sought to be reviewed was first raised and the way this question was passed upon by the lower courts. Their position seems to be that under the

<sup>4</sup> This is the most recent case in Georgia on resolving church property disputes in a connectional denomination and was the basis for the decisions of the trial court and the Supreme Court of Georgia. This case is not discussed or cited in the Petition.

First Amendment and *Serbian Eastern Orthodox Diocese, supra*, the only permissible method of resolving church property disputes is the American version of the implied trust doctrine. However, in the courts below, they based their case on *Carnes v. Smith, supra*, and never advanced the contention that the approach mandated by that case contravenes the First Amendment.

## REASONS FOR DENYING THE WRIT

### 1.

The decisions below are not in conflict with any of the First Amendment decisions of this Court including *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*.

### 2.

Under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) this Court cannot fashion general common law rules to supercede state laws for the resolution of church property disputes.

### 3.

This case would make a singularly inappropriate vehicle to review the decisions of any other state to determine if they are in conformity with the First Amendment principles laid down by this Court.

## ARGUMENT

### I.

Petitioners urge this Court to grant the writ based on their contention that the Georgia courts have ignored this Court's teachings in *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*. This simply is not the case. Neither the trial court nor the Supreme Court of Georgia made any attempt whatsoever to resolve any questions of religious law, custom, polity or doctrine. Their decisions recognize and are strictly in accord with the rule that "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969) (hereinafter, *Hull*).

In *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E. 2d 690 (1968) the Supreme Court of Georgia sanctioned the use of the English view<sup>5</sup> of the implied trust doctrine and upheld the decision of the trial court which was based on a jury finding that the denomination had abandoned the original tenents of faith and practice.

This court granted certiorari and reversed. *Hull, supra*. It held that the First Amendment severely

<sup>5</sup> See *Craigdallie v. Aikman*, 1 Dow. 1, 3 Eng. Rep. 601 (H.S. 1813); *Attorney General ex. rel. Mander v. Pearson*, 3 Mer 353, 36 Eng. Rep. 135 (Ch. 1817).

circumscribes the role that civil courts can play in determining church property disputes, and that it prohibits any civil court litigation concerning faith and practice. Although civil courts are not prohibited from deciding a property case because it involves a church, they must fashion rules and formulas which do not impinge on First Amendment values.

On remand, the Supreme Court of Georgia noted that its view concerning departure-from-doctrine had been eliminated,<sup>6</sup> and proceeded to abandon the implied trust doctrine as a method of resolving church property disputes:

"This being the case, the entire theory must fall. Since Georgia chose to adopt the implied trust theory *with* this element as a condition, this court must assume that it would not have adopted the theory without this mode of protecting the local churches.

"Therefore, a part of the rule having been stricken, the remainder falls with it, and there is no implied trust on the property in controversy." 225 Ga. at 260.

Seven years later, the Supreme Court of Georgia was again faced with a church property dispute arising in a connectional denomination, the United Methodist Church. *Carnes v. Smith, supra*. The trial

<sup>6</sup> "Since the Georgia courts on remand may undertake to determine whether petitioner is entitled to relief on its cross-claim, we find it appropriate to remark that the departure-from-doctrine theory can play no rule in any future judicial proceedings." 393 U.S. at 450.



court had awarded the use of the property to the Bishop and other representatives of the denomination. On appeal the Supreme Court again stated that it was not following the implied trust doctrine, but referred to language in its decision on remand in *Eastern Heights* which left open the possibility of awarding the use of the property to the denomination based on "other factors" and not the mere connectional relationship between a local and general church.

It then adopted the Maryland approach which was generally sanctioned by this Court in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 A.2d 162 (Md. 1969), app. dismissed, 396 U.S. 367, and found that statutes corporate charters, the language in relevant deeds and the organizational constitutions of a denomination qualify as "neutral principles" under the developing case law. It concluded that there were indeed "other factors" present in the case upon which a trust was found in favor of the denomination, primarily because the Discipline of the United Methodist Church clearly provides that all property at all levels of the denomination is held in trust for the United Methodist Church. There is no such provision in the Book of Church Order, and in fact the only provisions which deal with local church property provide that the trustees or corporate officers shall act *solely* under instructions of the congregation which they serve.<sup>7</sup>

<sup>7</sup> Section 6-1 deals with trustees of an unincorporated local church and provides in part: "In the fulfillment of their duties such trustees shall be subject always to the authority, and shall act solely under the instructions, of the congregation which they serve as trustees." Section 6-2 deals with an incorporated church in which all members are members of the corporation and provides in part: "In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation." Title to part of the property in issue is held by trustees; the remainder is held by the local church corporation.

In the instant case the Supreme Court of Georgia simply followed its holding in *Carnes, supra*, and after reviewing the "other factors" in the record concluded that there was no basis to award use of the property to the denomination or any group recognized by the denomination.

Petitioners contend that this holding was in error because the Supreme Court did not defer entirely to the holding of a higher church judicatory. As we point out in Part II of our Argument, no case decided by this court including *Serbian Eastern Orthodox Diocese* requires any such result.

In a related vein petitioners also find fault with the result reached below because the court stopped its inquiry into the Book of Church Order at the provisions dealing with the property of a local church and did not rely on provisions dealing with the powers vested in the various levels of the church (none of which deal with property) and various "implementing guidelines" promulgated by the denomination. Petition, n.9. Not only were these "implementing guidelines" absent from the record below, but any such inquiry would violate the threshold rule concerning civil court determination of ecclesiastical matters.

Petitioners also contend that the result reached by the Supreme Court of Georgia violates the First Amendment because it amounts to a rule of neutral principles of majority rule. The short answer to this argument is the result reached in *Carnes v. Smith, supra*. In that case, the trial court found that the property was held in trust for the use of the ministry and



members of the United Methodist Church and enjoined the local trustees from interfering with that use. The United Methodist Church has won two other cases in Georgia where there were few if any loyal members of the local congregation. *United Methodist Church v. Sparrow*, No. 6881 (Superior Ct. of Dooley Co., 1976); *United Methodist Church v. Doolittle*, No. 1359 (Superior Ct. of Washington Co., 1974).

The choice by a state to adopt the implied trust rule as urged by petitioners is clearly result orientated. Virtually all church litigation is precipitated by disputes over doctrine and/or policy. The implied trust rule insures that the views of the denomination and the group loyal to it will be vindicated, at least insofar as the use of any property is concerned. On the other hand, the approach adopted by Georgia is completely neutral with respect to any predetermined results. Such approach follows from the judicious advice of this Court in the *Hull* decision<sup>8</sup> and leaves the result to interaction between various levels in any particular denomination as to whether there is to be any general control over local church property. It then reviews the results of this interaction in a completely neutral fashion, and reaches a decision which may or may not turn on a majority vote, but which in all events does not vindicate the beliefs of either side in the underlying controversy.

<sup>8</sup> "Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require civil courts to resolve ecclesiastical questions." 393 U.S. at 449. (emphasis added)

## II.

## A.

Although the parties in this case represent two factions of a local church congregation, the complaint seeks an injunction to put the Petitioners into possession, control and peaceful enjoyment of certain described real estate. The source of law to be applied in a property case is the law of the state in question. The Fifth Circuit Court of Appeals made this point unmistakably clear at an earlier stage of this litigation:

"Simply stated, plaintiffs' case is essentially a suit for the title and possession of real estate. This is an action at law. *White v. Sparkill Realty Corp.*, 280 U.S. 500, 50 S.Ct. 186, 74 L.Ed. 578 (1930). Questions involving the title and possession of real estate must be decided under state law and in a state court if no Federal or constitutional question is involved." *Lucas v. Hope*, 515 F.2d 243, 236 (5 Cir. 1976).

Unless this Court is prepared to overrule or seriously erode the doctrine of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), it simply cannot mandate what state property law ought to be as a matter of general common law. It can, of course, examine the property law which a state adopts to determine if it passes muster under the First and Fourteenth Amendments as it did in the *Hull* case, however, it cannot go further and say what the state's law ought to be to replace any rule which is found to be lacking.

## B.

Implicit in the question presented by petitioners is the notion that prior decisions of this Court have nevertheless mandated that the Constitution allows only the implied trust doctrine approach to resolving church property disputes in a connectional church case. No decision of this Court so holds.

In *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872) this Court examined the general law which civil courts had applied on the subject of property held by churches and described three general rules, relying on state court decisions. The third rule governs in cases in which the religious congregation is connected by religious views and ecclesiastical government to a larger general organization. The rule for such cases and the one actually applied by the Court to the facts before it is as follows:

"Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property." 80 U.S. 666, 676.

The existing congregation or its regular successor is determined by looking to the group recognized by

the larger denomination regardless of doctrinal disputes. 80 U.S. at 676. This rule was fashioned in 1872 and was a rule of general common law rather than state law as was the practice then in force under *Swift v. Tyson*, 16 Pet. 1 (1842). See *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 115-16 (1952).

The *Watson* Court then noted that the English view (which had been applied in state court litigation between the same parties) is different. It awards the property to whichever group a civil court determines is still true to the original tenets and doctrine rather than the successor organization. In language which was later described as having a "clear constitutional ring", the Court found that the English rule is incompatible with the American principles of separation of church and state and the preponderant weight of authority in this country.

In *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, *supra*, this Court noted that *Kedroff* had converted the principle discussed in *Watson* concerning the English view into a constitutional mandate. 393 U.S. at 447. It went on to hold that Georgia's application of the English rule was prohibited by the First and Fourteenth Amendments. However, in so doing, the Court did not also find a mandate in the Constitution which required all states to adopt the approach applied in *Watson v. Jones*, *supra*. The opinion points out that there are neutral principles of law which can be applied in church property disputes without jeopardizing First Amendment values, and directs that the

9 393 U.S. at 446 (1969).



departure-from-doctrine theory can play no role in future proceedings in the case. 393 U.S. at 449-50. Moreover, the Court denied a second petition for a writ of certiorari filed by the Presbyterian Church in the United States which sought to have the rule of property law discussed in *Watson v. Jones* elevated to constitutional status. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 396 U.S. 1041 (1970)<sup>10</sup>.

On the same day this Court also decided *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, *supra*, wherein it sanctioned the resolution of a church property dispute by a method other than the implied trust doctrine. This case was pending at the time of the *Hull* decision and was remanded to the Maryland Court of Appeals for further consideration in light of the decision in *Hull*. 393 U.S. 528 (1969). The Maryland Court of Appeals reaffirmed its previous ruling which was based on the application of neutral principles of property law developed for use in all church property disputes. *Maryland and Virginia Eldership v. Church of God*, 254 A.2d 162 (1960). The case was again brought before this Court and the appeal was dismissed for lack of a substantial federal question. 396 U.S. 367 (1970).

<sup>10</sup> Question Presented: Did Georgia Supreme Court abridge freedom of religion, in violation of First Amendment, and violate Fourteenth Amendment's Due Process Clause by eliminating implied trust doctrine that imposes trust upon local church property in favor of mother church, thus overruling decision of duly constituted church tribunal and transferring control of local church property from mother church to dissident members of local congregation who failed to seek any redress through procedures established by church government?

In a concurring opinion Justice Brennan stated that in his view the states are not limited or restricted to any one particular approach to settling church property disputes. He then suggested three possible solutions which would be proper as long as doctrinal matters are involved: (1) the implied trust doctrine as applied in *Watson v. Jones*, (2) neutral principles of law developed for use in all property disputes, and (3) special statutes governing the property of a particular denomination. 396 U.S. at 368-70.

There is nothing in the Court's opinion in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) which is in conflict with the views expressed by Justice Brennan or which mandates the use of the implied trust doctrine. In that case the Illinois Supreme Court was found to have impermissibly rejected the decisions of the highest church tribunals:

"For where resolution of the disputes *cannot be made* without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments *mandate* that civil courts shall not disturb the decisions of the highest ecclesiastical tribunals within a church of hierarchial polity, but must accept such decisions as binding on them, *in their application of the religious issues of doctrine or polity before them.*" 426 U.S. at 709 (emphasis added).

The issues before the Court in that case were quintessentially religious, i.e., who is the real archbishop and was the Diocese properly reorganized into



three divisions? It would be impossible to decide such questions without deferring to the decisions of higher church authorities.

However, the "application of . . . religious issues of doctrine or polity" in property cases before civil courts has relevance only in states which have adopted the implied trust approach. In others such as Maryland and Georgia, there is no occasion to determine what the highest religious tribunals might have decided on a particular issue. The neutral principles approach of these states focuses on the status of things as of the schism. It resolves the dispute by looking to deeds, state law on holding property by religious associations, local church corporation charters and the property provisions of the general church constitution or discipline. It attaches no significance to any after-the-fact action taken by either side before a church tribunal, and properly so as this could lead to a re-entry of the ecclesiastical thicket which the neutral principles approach completely avoids.

### III.

As discussed above, we do not believe that this Court has, can or should undertake to mandate the approach which the states should follow in resolving church property disputes. Petitioners nevertheless argue that such a ruling is necessary because of alleged confusion and conflict attending the application of First Amendment principles in cases litigated in other states. In the first place, we doubt if any such confusion actually exists. With the exception of *Baldwin v. Mills*, 344 So.2d 259 (Fla. App. 1977), the general

Presbyterian denomination or the group recognized by it appears to have prevailed in all of the cases from other states cited in the Petition. The Petition refers to only three cases involving other denominations, the Protestant Episcopal Church and the Church of God, which suggests that any confusion in litigation involving those churches is slight, if it exists at all.

Notwithstanding the law review articles cited by Petitioners concerning any confusion in the state courts, we believe that the principles laid down by this Court are unmistakably clear. *Hull* holds that church property controversies cannot be "made to turn upon the resolution by civil courts of controversies over religious doctrine and practice." Therefore, "(s)tates, religious organizations and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." 393 U.S. at 449. *Serbian* extends this principle to disputes over church polity and church administration as well as property cases. 426 U.S. at 710. In addition, it discusses and severely limits the *Gonzalez*<sup>11</sup> exception.

If other states are unable to conform their church property decisions to these requirements, it will be time enough to resolve any confusion when those cases are actually lost by the denomination and appealed.

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<sup>11</sup> *Gonzalez v. Archbishop*, 280 U.S. 1 (1929).

**CONCLUSION**

For the foregoing reasons, respondents respectfully suggest that the Supreme Court of Georgia did not err in affirming the trial court, that there is no conflict with applicable decisions of this Court, and the writ should therefore be denied.

Respectfully submitted,

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AUG 24 1978

MICHAEL RODAK, JR., CLERK

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

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No. 78-91

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R. W. JONES, SR., *et al.*,  
*Petitioners,*

v.

CHARLES T. WOLF, *et al.*,  
*Respondents.*

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**PETITIONERS' REPLY MEMORANDUM**

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---

**PETITIONERS' REPLY MEMORANDUM**

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Several of the points made in the Brief for Respondents in Opposition ("Resp. Brief") warrant this brief reply:

1. Respondents assert repeatedly that Petitioners are relying upon an "implied trust" theory. Resp. Brief at 4-5, 10, 12. That simply is not true. Throughout this litigation, in response to similar arguments by Respondents, Petitioners have consistently emphasized that they are not claiming any implied trust in favor of themselves or of the national church.<sup>1</sup> Rather, Petitioners' contention has been and is that they constitute the true congregation of the Vineville Presbyterian Church, by virtue

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<sup>1</sup> See, e.g., Supplemental Brief of Appellants, filed Jan. 27, 1978, at 2 ("No implied trust is involved \* \* \*"); Reply Brief for Appellants, filed Jan. 16, 1978, at 5 ("No implied trust on behalf of the parent church is at issue here \* \* \*").

of a TPCUS church court determination that should be binding upon all civil courts, pursuant to First Amendment principles. See Petition for a Writ of Certiorari ("Cert. Petition") at 4-5, 7-9.<sup>2</sup>

2. Respondents seem to suggest, but do not argue, that Petitioners have failed to show that the constitutional question was raised below (Resp. Brief at 4-5). However, Petitioners clearly raised the First Amendment issue at all appropriate stages in the state courts. All of the legal briefs filed by Petitioners in the state courts cited and relied upon *Watson v. Jones* and *Serbian Eastern Orthodox Diocese v. Milivojevitch* for the proposition that First Amendment principles require the civil courts to defer to hierarchical church court determinations. See, e.g., Motion for Rehearing by Appellants, filed April 12, 1978, at 2; Reply Brief for Appellants, filed Jan. 16, 1978, at 6; Brief for Appellants, filed Dec. 8, 1977, at 15; Brief for Appellants, filed Dec. 8, 1977, at 20.<sup>3</sup> Moreover, the Complaint, as well as the Stipulation of

<sup>2</sup> It should also be noted that Respondents imply that, despite the local church schism, Petitioners were free to use the property of the Vineville church, but instead chose voluntarily to carry on their church activities elsewhere. Resp. Brief at 1-2. The fact is that—as Respondents have stipulated—since May 27, 1973, Respondents have retained control of the church property "to the complete exclusion of [Petitioners] and the class they represent as a Local Unit of TPCUS \* \* \*." Cert. Petition at 5a. Thus, the only way Petitioners could have used the local church property would have been to abandon their TPCUS affiliation—in effect, to give up their religion as they presently practice it. This they obviously can not do.

<sup>3</sup> See Brief for Appellants, filed Dec. 8, 1977, at 20:

[T]he constitutional parameters of civil courts in church cases have again been considered recently by the Supreme Court of the United States. *Serbian Eastern Orthodox Diocese v. Milivojevitch* \* \* \*.

See also Motion for Rehearing by Appellants, filed April 12, 1978, at 2 ("The Court may not interpose its own judgment in this ecclesiastical decision. In so doing, the Court overlooked \* \* \* the case of *Serbian Eastern Orthodox Diocese v. Milivojevitch* \* \* \*").

Facts submitted to the trial court, rested heavily on the church court determination that Petitioners constitute the "true congregation" of the church. See, e.g., Complaint, filed Apr. 15, 1976, at ¶ 12. Thus, Petitioners presented the constitutional issue to the courts below, and it is ripe for review here. Compare *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Presbyterian Church*, 393 U.S. 440, 444 n.3 (1969).

3. Respondents have denied Petitioners' showing that there is conflict and confusion in the lower courts concerning the application of *Serbian* to cases such as the instant one. Resp. Brief at 16-17. Yet Respondents' Brief itself corroborates Petitioners' point.

First, Respondents assert that "*the present law in Georgia concerning church property disputes places no significance on the actions of any church judicatories* \* \* \*." Resp. Brief at 2 (emphasis added).<sup>4</sup> That is precisely Petitioners' point, since we have shown that numerous other courts have held the contrary—that *Serbian* requires civil courts to defer to decisions by hierarchical "church judicatories." See Cert. Petition at 11-12.

Second, Respondents deny that the approach taken by the courts below necessarily leads to "majority rule" in hierarchical churches. Resp. Brief at 10. However, when

<sup>4</sup> See also the assertion (Resp. Brief at 16) that the "neutral principles approach" which the courts below adopted "attaches no significance to any after-the-fact action taken by either side before a church tribunal."

It is important to note that Respondents nowhere contend (nor could they under the stipulated facts) that the commission which established the true congregation was in any way improperly constituted, acted outside its jurisdiction as established by the hierarchical church, or in any other way reached an improper conclusion. Respondents' quite simple and straightforward point is that the church's determination is irrelevant to the case and can be ignored—as it was by the courts below.



civil courts follow the so-called "neutral principle" of looking to property deeds and other similar records, and when the courts find, as here, that title rests with the local church, the "neutral principles" approach gives no further guidance on how to determine who constitutes the true congregation of the local church. Inevitably—whether or not articulated—such an approach leads the civil courts, like the lower courts here, to impose notions of majority rule that may be inapplicable to the particular church setting. See Cert. Petition at 15.

Finally, Respondents themselves have set forth the reason for the uncertainty in the lower courts on this issue. As they indicate (Resp. Brief at 6-8, 13-15), this Court's denial of certiorari in the second *Hull* case, and its summary affirmance in *Maryland & Virginia Eldership*, have led some courts to conclude that the *Watson v. Jones* deference rule no longer is constitutionally required. In particular, Mr. Justice Brennan's concurrence in *Maryland & Virginia Eldership* has been cited by some courts (and Respondents) for this proposition, despite the fact that *Serbian* emphasizes that hierarchical church court determinations must be binding on the civil courts.

The confusion and conflict in the lower courts is continuing,<sup>5</sup> and this Court should grant certiorari here in order to resolve the uncertainties in this important and recurring area of church disputes.

<sup>5</sup> Since the filing of the Petition for a Writ of Certiorari in the instant case, still another court has entered a decision directly contrary to the Georgia Supreme Court's ruling under review here. In *Mills v. Baldwin*, No. 51,588 (Fla., July 20, 1978) (copy attached), the Florida Supreme Court, in a 5-2 decision, reversed the Court of Appeals decision referred to in our earlier Petition. The Florida Supreme Court noted that the true issue in cases such as these is the identity of the local congregation, and it held that, because TPCUS is a hierarchical church, the civil courts must defer to a church court determination on this issue. Thus, the Florida rule is directly contrary to the Georgia courts' approach in the instant case.

## CONCLUSION

For the foregoing reasons, and for the reasons stated in their earlier Petition, Petitioners respectfully urge the Court to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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# **APPENDIX**

APPENDIX

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A.D. 1978

Case No. 51,588

DCA Case No. Z-13

CRAIG MILLS and H. SAVELY MCQUAGGE, Trustees of the Presbytery of Florida; FRANK L. ELVERY, RICHARD L. SCOGGINS, C. FRANKLIN BEALL, LOUISE EYSTER, REEVES BOWEN and FRED MCGEHEE, as and constituting the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; HENRY RAGANS and OSCAR BECK, JR., as and constituting the Session of the Madison Presbyterian Church in Madison, Florida,

*Petitioners,*

v.

JOHN P. BALDWIN, individually and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; BRUCE M. BRYAN, JULIAN DURANT, JULIAN GIBSON, THEODORE GIBSON, A. L. HUGHES, and KIRBY REICHMANN, individually and claiming to be members of the Church Session of the Madison Presbyterian Church in Madison, Florida,

*Respondents.*

Opinion filed July 20, 1978

Writ of Certiorari to the District Court of Appeal, First District

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F. E. Steinmeyer, III of Folsom and Steinmeyer, Tallahassee, Florida, for Respondents

Raymer F. Maguire, Jr. of Maguire, Voorhis and Wells, Orlando, Florida, for James E. Andrews, Stated Clerk of the General Assembly of the Presbyterian Church in the United States, Amicus Curiae

Edward D. Foreman; and James W. Martin of Brickley and Martin, St. Petersburg, Florida, for William P. Thompson, Stated Clerk of the General Assembly of The United Presbyterian Church in The United States of America, and for Robert L. Thompson, Executive Presbyter of The Presbytery of West Florida, Synod of The South, of The United Presbyterian Church in The United States of America, Amicus Curiae

#### SUNDBERG, J.

This cause is a petition for writ of certiorari to review a decision of the District Court of Appeal, First District, reported at 344 So.2d 259, which is alleged to be in conflict with *St. John's Presbytery v. Central Presbyterian Church*, 102 So.2d 714 (Fla. 1958) and *Froelich v. Rowley*, 102 So.2d 720 (Fla. 1958). On petition for rehearing of our prior denial of writ of certiorari in this cause, we have concluded that this Court is possessed of jurisdiction under Article V, Section 3(b)(3), of the Florida Constitution.

Essentially this case involves a dispute over the ownership of property of the Madison Presbyterian Church in Madison, Florida, or stated more accurately, a controversy as to who constitutes the Madison Presbyterian Church in Madison, Florida. The dispute is occasioned by the withdrawal of a majority of the congregation from the Presbyterian Church in the United States (PCUS) and its claim of title to the church property as against the claim of the minority of the congregation who did

not withdraw but remained faithful to the parent church. Applying "neutral principles of law" the majority of the district court concluded that there was no implied trust in favor of the mother church as was found to exist in *Central Presbyterian Church*, supra, and, accordingly, held the property of the church to be vested in the withdrawing members. The factual background of the controversy is stated in the district court opinion thus:

Plaintiffs in the trial court, [petitioners], were Craig Mills and H. Savely McQuagge, Trustees of the Presbytery of Florida of the Presbyterian Church in the United States; Frank L. Elvery, Richard L. Scoggins, C. Franklin Beall, Louise Eyster, Reeves Bowen and Fred McGehee as and constituting the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; Henry Ragans and Oscar Beck, Jr. as members of and recognized by the Presbytery of Florida of the Presbyterian Church in the United States as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida. The defendants, [respondents], were (as named and designated by the plaintiffs) John P. Baldwin, individually, and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; Bruce M. Bryan, Julian DuRant, Julian Gibson, Theodore Gibson, A. L. Hughes and Kirby Reichmann, individually and claiming to be members of the Church Session of the Madison Presbyterian Church in Madison, Florida, and Florida First National Bank at Madison, a bank holding funds on deposit in the name of the church. The attorneys for the respective parties entered into a lengthy stipulation which was filed in evidence before the trial judge agreeing upon numerous facts many of which, although not relevant to the application of

sterile legal doctrines, are necessary in order to understand the factual basis of the controversy.

A Church Session is the governing body of a local church. A Presbytery is composed of several churches in a geographical area; a Synod is generally composed of all Presbyteries within a state or other designated geographical area and the General Assembly is the highest governing body in the hierarchical spiritual structure of the Presbyterian Church.

The first Presbyterian Church was established in America on the Virginia coast in 1607. Originally there was one main body of Presbyterianism which was known as the Presbyterian Church in the United States of America. (PCUSA) The Madison Presbyterian Church located at Madison, Florida was founded in 1840. It was originally a part of the Presbytery of Georgia but later became a congregation of the Presbytery of Florida. It is, and at all times has been, an unincorporated entity. Since its formation in 1840 all of the church property has been held by trustees elected by a majority of the congregation of the church. The primary church property was acquired by deed executed in March of 1851 to the "Trustees of the Presbyterian Church at Madison aforesaid and their successors in office \* \* \* To Have and To Hold the said lots of land to and for the use of the Presbyterian Church at Madison." In 1861 the Presbytery of Florida met at the Madison Presbyterian Church in Madison and unanimously adopted a resolution severing its affiliation with the Presbyterian Church in the United States of America (PCUSA) and concurred in a call for Commissioners for the organization of a General Assembly with power to organize a new church. The Madison Church sent a delegate to the meeting of the General Assembly held in 1861 (held

incidentally at the Madison Church) at which time a resolution was unanimously adopted by which a denomination was formed bearing the name Presbyterian Church in the Confederate States of America. Thereafter, the name of that denomination was changed to the Presbyterian Church of the United States (PCUS). The parties have stipulated that neither the General Assembly of the Presbyterian Church in the United States nor the Synod of Florida nor the Presbytery of Florida has ever contributed any property to the Madison Presbyterian Church, nor has it provided any funds with which the property of said church was acquired.

On March 11, 1973, John P. Baldwin, then the regular ordained and installed Pastor of the Madison Presbyterian Church, presided over a meeting of the congregation. Upon a vote taken at such meeting, a petition was adopted requesting the Presbytery of Florida to dismiss the Madison church and its property from the Presbytery and to dismiss and dissolve the relationship between Rev. Baldwin and the Presbytery of Florida and the PCUS. Following various intra-church maneuvers a resolution was adopted by the congregation of the Madison Presbyterian Church on May 20, 1973 withdrawing from and severing all relationship with the Presbytery of Florida and the PCUS. On June 5, 1973 the Presbytery of Florida removed the name of John Baldwin from the roll of the Presbytery and declared the pulpit of the Madison Presbyterian Church to be vacant. The Presbytery declared and recognized Messrs. Beck and Ragans, among others, as constituting the Church Session of the Madison Presbyterian Church with full authority to assume control of the congregation and all land, buildings, personal property and monies of the local church.



On August 7, 1973 plaintiffs [petitioners] filed an action in Circuit Court asking that the individual defendants [respondents] and all others associated with them be restrained from interfering with the plaintiffs and other "loyal" members of the PCUS in the use of the property of the Madison Presbyterian Church; from using or attempting to use the property of the Madison Presbyterian Church for any purpose except in conformity with and subject to the government and discipline of the PCUS; from selling, disposing of or encumbering the property of the Madison Presbyterian Church; from paying or delivering to any person or corporation any money, funds, bonds, securities, or other property in their possession or under their control constituting the property of the Madison Presbyterian Church and from occupying the Manse of the Madison Presbyterian Church. The foundation of the plaintiffs' cause of action as alleged in their complaint was a "trust originally imposed upon said property [of the Madison Presbyterian Church] for the promulgation of the trusts and doctrines of the Presbyterian Church in the United States \* \*." At the conclusion of a lengthy trial, final judgment was entered for the plaintiffs.

344 So.2d at 260-62 (footnotes omitted).

The majority below determined that the structure of the Presbyterian Church, being hierarchical as opposed to congregational, was immaterial to its resolution of the case because, through application of "neutral principles of law" to the facts, neither form of accepted implied trust (constructive or resulting) could be recognized. This conclusion of the district court was based primarily upon its finding that no funds were provided by either the Presbytery of Florida or PCUS with which any of the property of the Madison Church was acquired. Conse-

quently, the necessary ingredient for a constructive trust was absent. Likewise, there was no evidence at trial that any of the properties conveyed to the Madison Church "were intended to be conveyed for the benefit of any entity other than the congregation of the Madison Presbyterian Church" and, therefore, no resulting trust could arise. Its position with respect to the absence of a resulting trust was bolstered by the fact that PCUS did not come into existence until some 21 years after the Madison Church was organized. *St. John's Presbytery v. Central Presbyterian Church* and *Froelich v. Rowley*, supra, were distinguished by the district court on the premise that the facts in those cases demonstrated the existence of elements necessary to support a constructive trust.

Most respectfully we must disagree with the analysis of the majority of the district court. This Court subscribes to the reasoning and conclusion of Judge Smith's dissent below, and it would be of little benefit to restate what was so ably put by him. However, since it bears upon the jurisdiction of this Court as well as the merits of the controversy, we deem it appropriate to elucidate why we believe *Central Presbyterian Church* and *Froelich* are controlling here.

The salient facts as found by the chancellor in *Central Presbyterian Church* were:

(1) During the year 1953, defendant, Central Church, withdrew from the Presbyterian Church in the United States (Southern), hereinafter referred to as Presbyterian Church. It is shown that Central Church was organized or established by the First Presbyterian Church of St. Petersburg and received financial assistance from it; that the original deed of conveyance was made to the "Trustees of the West Central Presbyterian Church and their successors." The church was later incorporated under the laws of



Florida and title to the realty was conveyed to "Central Presbyterian Church of St. Petersburg, Florida, a corporation."

(2) The chancellor further found that none of these deeds created a trust but were absolute conveyances to the grantees named, the first grantee being Central Church, a corporation; that the will of H. H. and Harriet Victory, deceased, directs their trustees to pay over the balance remaining after certain bequests are paid to certain beneficiaries including "Central Presbyterian Church of St. Petersburg."

102 So.2d at 715.

Based upon his comparison of Chapter 27, paragraphs 9 and 10, Constitution of the Presbyterian Church of the United States of America (PCUSA) with paragraph 163, Book of Church Order of the Presbyterian Church of the United States (PCUS), the chancellor concluded that while the government of PCUSA was hierarchical in nature, that of PCUS was congregational. In reversing the chancellor, this Court stated:

The admissions in the answer and the evidence without contradiction show that the Presbyterian churches in the United States are not congregational in government but are representative, they are governed by an ascending series of judicatories known as the session, the presbytery, the synod and the general assembly, which is governed by a constitution and an ecclesiastical code giving it legislative, executive and judicial powers. Questions of usage, custom or practice relating to the local church or its members are governed by these judicatories and each is bound to the other by church or ecclesiastical law.<sup>1</sup>

102 So.2d at 716.

<sup>1</sup> It should be noted that the trial judge in the instant case made the identical finding that PCUS is hierarchical and not congregational in structure.

After reviewing the substance of the documents creating title in the "Central Presbyterian Church of St. Petersburg" (a non-profit corporation), including the original conveyance to the "Trustees of West Central Presbyterian Church and their successors in office," the Court applied the doctrine of *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666 (1872), and held that the property in question should not be diverted from the parent church by the withdrawing members. Consequently, the faithful minority were awarded the use of the property as the rightful representatives of the original church as it existed before the schism.

The district court opinion herein places great emphasis upon the fact that the affected church in *Central Presbyterian Church* had been organized and established by an existing Presbyterian church in St. Petersburg from which it received financial assistance and a gift of the disputed property. This, together with the language of the original conveyance of the disputed property, was persuasive to the court as distinguishing the case at bar from *Central Presbyterian Church*. The district court was bolstered in its conclusion by the reference of Justice Terrell in *Central Presbyterian Church to Reid v. Barry*, 93 Fla. 849, 112 So. 846 (1927). However, we can draw no such inference from Justice Terrell's discussion of *Reid v. Barry*. He simply distinguished the latter case from *Central Presbyterian Church* on the premise that on the face of the deed in *Reid* there was no reference to a trust for the benefit of the Roman Catholic Church, whereas in *Central Presbyterian Church* the root deed ran to "Trustees of West Central Presbyterian Church of St. Petersburg and their successors in office." As stated by Justice Terrell:

In *Reid v. Barry* the complaint nowhere alleges "that the deed was a trust deed, or that it was made to the bishop for the benefit of the Roman Catholic

Church." It is silent as to the purpose for which it was made and the Roman Catholic Church is nowhere named therein, while here it is alleged and admitted that the property was acquired by the First Presbyterian Church of St. Petersburg and was given and conveyed to "Trustees of West Central Presbyterian Church of St. Petersburg and their successors . . . .

102 So.2d at 719.

The conveyances here under consideration run to the "Trustees of the Presbyterian Church at Madison" and the "Trustees of the Madison Presbyterian Church of Madison." In the *Reid* case the conveyance was absolute on its face with no intimation of beneficial enjoyment in others except the reference to the grantee's office. As the Court pointed out in *Reid*:

It can hardly be argued that the language of this deed necessarily implies the intention to create a trust, for any particular purpose, or for the benefit of any particular beneficiary, none being named, and there being no precatory words contained therein.

112 So. at 857.

Justice Terrell simply sought to distinguish *Reid* on the obvious basis that the deed therein contained no language to imply a trust, whereas the deed in *Central Presbyterian Church* connoted a trust relationship and the object thereof.

The basis for the decision in *Central Presbyterian Church* is indicated by two excerpts from the opinion. After citing numerous authorities in accord with *Watson v. Jones*, supra, the *Central Presbyterian Church* Court said:

This is an abounding array of authorities but they all treat some phase of litigation growing out of church schisms in which both factions lay claim

to the church property. When the church is representative, republican or episcopal in government, the authorities uniformly hold that the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or a minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated ecclesiastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran, I have found no exception to this rule. *They could not function under any other rule.*

102 So.2d at 718 (emphasis supplied).

That the real basis for the decision in *Central Presbyterian Church* was the principle of church structure, and not neutral principles of trust law, is borne out by the judgment therein:

It follows that the final decree of the chancellor must be, and is, hereby reversed with directions to enter a decree holding that, on account of the circumstances shown an implied trust existed in the property in question in favor of the Central Presbyterian Church of St. Petersburg for the use of the Presbyterian Church in the United States and awarding the use of said property to appellants as the rightful representatives of the original church as it existed before the schism.

102 So.2d at 719-20 (emphasis supplied).

Furthermore, *Froelich v. Rowley*, supra, decided the same day as *Central Presbyterian Church*, is even more instructive on this point. In *Froelich*, another church schism case, where neither the source of the property nor whether it was acquired before or after the congregation's affiliation with the parent church is indicated, Justice Terrell described the substantive issue and its resolution:

The first question presented is whether or not the majority of the congregation of a Presbyterian Church in the United States can withdraw from said church and the presbytery and claim title to the church property as against the claim of title of the minority group who did not withdraw but remained faithful to the parent church.

This is the identical question that was presented and decided in *St. John's Presbytery v. Central Presbyterian Church of St. Petersburg*. What we said in that case concludes the point raised here contrary to the contention of appellants [the withdrawing majority].

102 So.2d at 721.

In short, a careful reading of the cases makes clear that the issue in a case such as this is not who owns the property. The Madison Presbyterian Church of Madison, Florida, owns the property. The true issue is—who represents the Madison Presbyterian Church? The authorities from *Watson v. Jones* forward clearly respond that petitioners represent that church because of the structure and government of PCUS. As pointed out in Judge Smith's dissent, the fact that PCUS was formed by the secession of Presbyterian churches in the Confederacy a generation after organization of the Madison church affects not at all the commitment of the Madison Presbyterian Church to PCUS in 1861 and continuously for generations thereafter.

Accordingly, the petition for certiorari is granted, the opinion of the District Court of Appeal, First District, is quashed and the dissenting opinion is adopted as the opinion of this Court.

It is so ordered.

ENGLAND, C.J., ADKINS, OVERTON and ALDERMAN, JJ., Concur

BOYD, J., Dissents with an opinion, with which HATCHETT, J., Concurs



BOYD, J., dissenting.

I would discharge the writ of certiorari because I do not believe there is conflict. As the majority acknowledges, the court below decided the church property dispute based on trust law, while the alleged conflicting decisions, just as the majority's, find the disputes over church property to turn on which group constitutes the church. The questions, one legal, the other, at least partially ecclesiastical, are wholly dissimilar. Nor do I see a misapplication of *St. John's Presbytery v. Central Presbyterian Church*, 102 So. 2d 714 (Fla. 1958) and *Froelich v. Rowley*, 102 So. 2d 720 (Fla. 1958), since principles of trust law were applied in those two cases to factual situations that are, as detailed in the opinion below now quashed, dissimilar to the factual situation in this case.

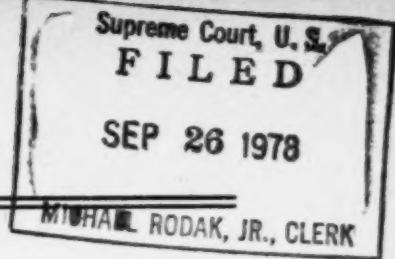
Moreover, I am distressed, *Central Presbyterian Church* and *Froelich* notwithstanding, that the Court is so willing to step into a dispute over church property that it believes should be resolved under a "principle of church structure" rather than "neutral principles of . . . law," opinion of the Court, before, at 8, when the decision of the court below can stand on the legal principles alone. While a civil<sup>1</sup> court may open its doors to a dispute over church property, the court has no role in settling the matter through a determination on the basis of whether one group departed from church doctrine. *Presbyterian Church v. Hull Church*, 393 U.S. 401 (1969). To assume such a role involves the civil courts in an ecclesiastical question solely within the purview of the church contrary to the Freedom of Religion clauses in the First Amendment to the U.S. Constitution.<sup>2</sup> The Court today treads dangerously close to the boundary

<sup>1</sup> To be distinguished from ecclesiastical and military courts rather than criminal courts.

<sup>2</sup> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

of territory of religious freedom protected constitutionally from civil court interference. It may be that a determination of church structure is properly within a civil court when church property is at stake, especially in a case in which another forum, such as an ecclesiastical court, will be partial or is unavailable. But the Court in this case need not take the risk of impinging on religious freedom since the case is clearly litigable under trust law.

HATCHETT, J., Concur



In The  
**Supreme Court of the United States**

OCTOBER TERM, 1978

---

**No. 78-91**

---

R. W. JONES, SR., et al.,  
*Petitioners,*

vs.

CHARLES T. WOLF, et al.,  
*Respondents.*

---

ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF GEORGIA

---

**BRIEF AMICUS CURIAE  
ON BEHALF OF RESPONDENTS URGING  
DENIAL OF PETITION FOR WRIT  
OF CERTIORARI**

---

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**CONSENT TO FILE AMICUS CURIAE**

With the consent of all counsel, Dr. G. Aiken Taylor, Moderator of the Presbyterian Church in America, hereby respectfully files a brief *Amicus Curiae* in this case in support of the Respondents.

The written consent of counsel for Respondents and of counsel for the Petitioners to file a brief *Amicus Curiae* in behalf of the Respondents is filed herewith.

**In The  
Supreme Court of the United States**

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**No. 78-91**

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**BRIEF AMICUS CURIAE  
ON BEHALF OF RESPONDENTS URGING  
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**I**

**QUESTIONS PRESENTED**

1. Did the decision of the Supreme Court of Georgia in *Jones v. Wolf*, 241 Ga. 208, 243 S.E. 2d 860 (1978) conflict with the First and Fourteenth Amendments of the U.S. Constitution and any decisions of this Court construing the same, including *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)?

2. Is not this Court proscribed from decreeing common law rules as to property which is exclusively a state question?

## II

## INTEREST OF AMICUS CURIAE

Dr. G. Aiken Taylor, as Moderator of the General Assembly of the Presbyterian Church in America, occupies the highest presiding office to which a member of that Church may be elected annually. He represents an ecclesiastical body of approximately 70,000 members with churches located in twenty-three states.

The case before this Court is of great importance to the Presbyterian Church in America as one of several Presbyterian denominations which in their constitutions expressly reject the hierarchical philosophy of church property ownership.

Contrary to ordinarily accepted dictum, there is a body of general churches fully identified as Presbyterian in form, doctrine, and government which specifically affirm a congregational philosophy as to church property. The Constitution of the Presbyterian Church in America (Book of Church Order, paragraphs 26-9 and 26-10) reads:

"All particular churches shall be entitled to hold, own and enjoy their own local properties, without any right of reversion whatsoever to any Presbytery, General Assembly, or any other courts hereafter created, trustees or other officers of such courts."

"The provisions of this Chapter 26 are to be construed as a solemn covenant whereby the Church as a whole promises never to attempt to secure possession of the property of any congregation against its will, whether or not such congregation remains within or chooses to withdraw from this body. All officers and courts of the Church are hereby prohibited from making any such attempt."

On May 7, 1973, the Respondents and others constituting the majority of Vineville Presbyterian Church of Macon, Georgia, voted to become an independent church. Subsequently they united with the Central Georgia Presbytery of the Presbyterian Church in America.

It was action like that taken in 1861 when numerous churches, presbyteries, and synods withdrew from what is now the United Presbyterian Church in the United States of America to form the Presbyterian Church in the United States.

## III

## ARGUMENT

## 1.

The petition of R. W. Jones, Sr., et al. for a writ of certiorari should be denied.

The decision of the Supreme Court of Georgia in *Jones v. Wolf*, supra, does not violate the First and Fourteenth Amendments of the U. S. Constitution or any ruling of this Court enunciated in *Serbian Eastern Orthodox Diocese v. Milivojevich*, supra. The charge of the Petitioners that this case commands the State Civil Courts to defer to the decision of a church court of a church with a connectional polity in a dispute between the loyal few and the departed majority is meritless. It ignores two controlling factors: the three guideline approach declared by Mr. Justice Brennan in *Maryland and Virginia Eldership of the Churches of God v. The Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970); the basic issues in *Serbian Eastern Orthodox Diocese*.

Mr. Justice Brennan in *Maryland and Virginia Eldership*, supra, advised the states that there are three ap-



proaches that can be employed in resolving church property conflicts without transgressing First Amendment values. Succinctly they are: deference to church authority; neutral principles of law, and specially drafted state statutes.

Since 1969 when this Court remanded *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) to the Supreme Court of Georgia for reconsideration in light of the "neutral principles of law" promulgated by this Court, the Georgia Court has adhered to those principles with fidelity.

Evidence of the commitment to the neutral principles is reflected in every decision of the Georgia Court from *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 225 Ga. 259, 167 S.E. 2d 658 (1970) (hereafter *Hull*), to *Coles v. Wilburn*, 241 Ga. 322, 245 S.E. 2d 273 (1978). Between *Hull* and *Coles* the Georgia Court has rendered decisions in *Carnes v. Smith*, 236 Ga. 30, 222 S.E. 2d 322 (1976) and *Jones v. Wolf*, *supra*, the case sub judice.

All of these cases involved churches of a connectional polity. *Hull* and *Jones* involved a Presbyterian denomination; *Carnes* and *Coles* involved Methodist denominations.

In *Carnes*, in a dispute between factions, the denomination and the loyal minority prevailed. In *Hull*, *Jones*, and *Coles* the dissenting majority prevailed.

In those cases the Georgia Court limited its inquiry into deeds, church constitutions, and state law of trusts. Neutral principles of law were sanctioned by Mr. Justice Brennan in *Maryland and Virginia Eldership*, *supra*.

In *Carnes v. Smith*, *supra*, the Georgia Court applying the other "factors test" impressed an implied trust on the local property for the denomination based upon the provisions of the church's constitution, the Discipline.

The grounds upon which the Petitioners seek a writ of certiorari were presented to this Court in the second petition for a writ of certiorari in *Hull*. The petition presented these questions:

"Does the recent decision of the Georgia Supreme Court which eliminates entirely the implied trust doctrine (which imposes a trust upon local church property in favor of the general church) violate the freedom of religion clause (Amendment I) and the due process of law clause (Amendment XIV, § 1) of the Constitution of the United States when the effect of such decision is to overrule a valid and binding decision of a duly constituted church tribunal and to transfer use of particular church property from the denominational authority to the dissident and former members of a particular church congregation who, before their secession, failed to seek any relief by the normal methods of appeal in the church?" (Emphasis supplied)

"Is the implied trust doctrine which was established by the Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), still a valid and binding principle of law?"

This Court summarily rejected the grounds presented by these questions, by denying the petition for a writ of certiorari.

A similar disposition should be made of this petition. Because it, like the petition in *Hull*, makes the same basic allegation: failure to defer to the decision of a church court.

This assertion has been answered adversely to the Petitioner, tacitly in *Hull* and positively in *Maryland and Virginia Eldership*.

The interpretation that Petitioners have placed upon this Court's ruling in *Serbian Eastern Orthodox Diocese* will not stand scrutiny. It is based upon two erroneous assumptions: (1) that the issue involved a property dispute between factions over *local church property*; (2) that the ruling rescinded this Court's enunciations in *Hull*, instituting the "neutral principles" and repeated in *Maryland and Virginia Eldership*, countenancing the "neutral principles."

As to the first erroneous assumption, the facts of the case establish that the issues were exclusively ecclesiastical—the defrocking of a Bishop and the reorganization of a Diocese. The property question was a peripheral issue that was implicated because of the Bishop's authority over the Diocese. The property affected was vested in a corporation formed by the Diocese. No local church property was involved.

Parenthetically, at the same time *Hull* and *Maryland and Virginia Eldership* were before this Court, there was a third case pending, *Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio v. Kelemen*, 393 U.S. 527 (1969). It, as the other two, was remanded for further consideration in light of *Hull*. Upon remand, the Ohio Supreme Court, applying the neutral principles of law, held:

"In addition, the Court of Appeals found that the members of plaintiff association have performed schismatic acts amounting to a withdrawal from the general church. The essence of this finding must lie in a judicial determination that plaintiff has acted

contra to the doctrine and tenets of the church. In order to make such a finding the Court of Appeals had to examine plaintiff's activity as well as church doctrine and tenets. The *Hull Memorial case, supra*, held that a jury could not make such an examination, and the viability of the principle of the *Hull Memorial case* commands the same judicial abstinence in the instant case."

"Recorded deeds show that the corporation holds legal title to all church property. A review of Ohio law does not reveal recognition of an implied-trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding Church doctrine. There are no deeds or other written evidence of conveyance from the local congregation, either to the diocese or the Mother Church. Moreover, the Serbian Orthodox Church School Congregation of Akron provides, in part 'The congregation may independently function only in the matters relative to the material holdings (properties) of the congregation.' Therefore, in the absence of a conveyance of the property by legal instruments or the existence of an express trust, the title to the property is vested in the corporation." (256 N.E. 2d at pages 216, 217)

The denomination involved in *Kelemen* is the same denomination that is involved in *Serbian Eastern Orthodox Diocese*. Though connectional (hierarchical) in its polity, the Serbian Church permits the congregational holding of property at the local level.<sup>1</sup>

1. *Dragelevich v. Rajsich*, 263 N.E. 2d 778 (Ohio, 1970).

Following disposition on remand, a writ of certiorari was sought. It was denied by this Court. (400 U.S. 827 (1970)). Thus *Kelemen* joined the ranks of *Hull* and *Maryland and Virginia Eldership*.

Mr. Justice Brennan in *Serbian Eastern Orthodox Diocese*, supra, made it abundantly clear that the error of the Illinois Supreme Court was its rejection of the finding of a church court which had resolved an ecclesiastical issue. The property followed that determination of a church court because of the proprietary interest the denomination had in the Diocesan property. At page 425, he observed:

[Because the Diocesan Bishop controls respondent Monastery and is the principal officer of respondent property holding corporations] "resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. Thus, this case essentially involves not a church property dispute, but a religious dispute. . ." (Emphasis supplied)

Such an interest is disclaimed by the denomination, "Petitioners have never argued that they or PCUS (Presbyterian Church in the United States) has any trust interest in the property."<sup>2</sup>

Though the Petitioners have been dubbed the loyalists, such a determination in the absence of a proprietary interest in the denomination does not vest the loyalists with any interest in the local church property. It is the proprietary interest of a general church that controls the dispute. *Watson v. Jones*, supra, is decisive on this conclusion. In *Watson* the local church prevailed because the Court found an implied trust in behalf of the general

2. Footnote 7, page 6 of petitioners' petition.

church upon the local church property. The designation of people without the collateral proprietary interest in the denomination passes nothing to the loyalists.

Contrary to what the Petitioners claim, *Serbian Eastern Orthodox Diocese* is not a constitutional command of this Court to defer to ecclesiastical edicts. This Court did not enfeeble the neutral principles. Actually, this Court's repeated reference to them affirms their vitality.

The Petitioners in their anxiety have confused the message in *Serbian Eastern Orthodox Diocese*. It was not a mandate to return to the "rule of action" of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871). The opinion recognizes the *Watson* rule but in doing so it left the neutral principles of *Hull* undiminished, "for where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity . . . civil courts . . . must accept such decisions within a church of hierarchical polity." Phrased in the positive rather than the negative, the charge by Mr. Justice Brennan would read, "where the resolution of the disputes can be made without extensive inquiry by civil courts into religious law and polity civil courts do not have to accept the decision of a church court of hierarchical polity." This extrapolation of the quote from *Serbian Eastern Orthodox Diocese* is consistent with this Court's rejection of the petition for a writ of certiorari filed in *Kelemen*, supra.

Supportive of this conclusion as to the meaning of *Serbian Eastern Orthodox Diocese*, are the references Mr. Justice Brennan makes to "formal title" (neutral principles) doctrine and the introduction of other criteria which might have affected the disposition of the Diocesan property (426 U.S. at pages 723 and 724).



The Supreme Court of Georgia in this case did not violate this Court's ruling in *Serbian Eastern Orthodox Diocese*. Its decision is in harmony with this Court's directives in that case and *Hull* and *Maryland and Virginia Eldership*. The Georgia Court employed the neutral principles of law, which it applied in *Hull* upon remand. In the most circumspect manner, it averted any inquiry into religious law or polity. It followed the neutral course though the Petitioners sought to ensnarl the Court in forbidden considerations.

If any confusion exists, it results from the Petitioners' unwillingness to accept the "neutral principles" of *Hull* and the "three guideline approach" of *Maryland and Virginia Eldership*. Some states have elected the "neutral principles approach", notably: Georgia, Maryland, Ohio, Tennessee, and Virginia. Other states have chosen the "deference approach". The approaches selected are permissible, under the directions of this Court. This Court since *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) has acknowledged that in matters of property the respective states establish their own laws. The three approved guidelines of *Maryland and Virginia Eldership* are consonant with the philosophy of *Erie*.

Before passing to other issues raised by the Petitioners, the unwarranted categorizing of the neutral principles of *Hull*, at page 7 of the Petitioners' petition, commands contradiction. It reads, "However, in dictum in *Hull*, supra, 393 U.S. 449, this Court for the first time referred to neutral principles of law . . .". Such an appraisal is a futile attempt to demean a principle of law enunciated unanimously by this Court in 1969 and subsequently amplified in *Maryland and Virginia Eldership*, supra, in 1970, and sanctioned by the denial of certiorari in *Hull*, supra, in 1970.

Since the declaration of the neutral principles of law, the majority of the states in which church property disputes have arisen have applied it. In most instances the Presbyterian Church in the United States has retained possession of local church property. Two states bordering Georgia have employed the neutral principles to the success of that denomination. In both cases the dissenting majority lost. *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston*, 531 S.W. 2d 301 (Tenn. 1975) and *Adickes v. Adkins*, 215 S.E. 2d 442 (S.C. 1975).<sup>3</sup>

What is *dictum* in Georgia is *law* in Tennessee and South Carolina. It would appear that the advocates of the denomination embrace the neutral principles as *law* where they are victorious but eschew them as *dictum* where they are vanquished.

At page 16 of Petitioners' brief is cited Section 22-5507 of the Georgia Code, "shall be fully and absolutely vested in such church or religious society . . . according to the mode of church government or rules or discipline." After citing this code section the Petitioners charge that the Georgia Supreme Court rejected the argument that this statute required the civil court to defer to a church court on the issue of which faction is the true church. The designation "mode of church government" lost any significance it might have had when the Georgia court in *Hull*, 225 Ga. 259, 167 S.E. 2d 658 (1970) (second appearance) excised the doctrine of implied trusts. The Court stated:

"Under Georgia law, insofar as churches with a connective form of government are concerned, there

3. Though calling its action an application of neutral principles, the South Carolina Court's ruling contradicts: "We have accepted the findings of the appropriate church judicatory as to the matter of identity." (215 S.E. 2d at page 445). Identity is not an element of the "formal title doctrine."

has been implied a trust on local church property for the benefit of the general church, but as a part of this rule the implied trust has been conditioned on the general church adhering to its tenets of faith and practice existing at the time of affiliation by the local church. See *Mack v. Kime*, 129 Ga. 1 (58 SE 184, 24 LRA (NS) 675); Code §22-408. In our review of these cases, we applied this rule of law."

"However, the United States Supreme Court, in reviewing our decision, held that although civil courts are the proper forum for resolving property disputes, the First Amendment to the United States Constitution forbids them from determining ecclesiastical questions in the process. For this reason, it reversed our decision, stating that 'the departure-from-doctrine element of Georgia's implied trust theory can play no role in any future judicial proceedings.' "

"This being the case, the entire theory must fall. Since Georgia chose to adopt the implied trust theory with this element as a condition, this court must assume that it would not have adopted the theory without this mode of protecting the local churches."

"Therefore, a part of the rule having been stricken, the remainder falls with it, and there is no implied trust on the property in controversy. There was no other basis for a trust in favor of the general church, none being created by the deeds on the property, implied under the statutes of this State (Code §§108-106, 108-107), or required by the constitution of the general church. It will be remembered that the general church put no funds into this property."

Mode of government refers to church polity. Since the Georgia Court's ruling on remand striking an implied

trust for the general church, the term "mode of government" has become meaningless. In subsequent holdings by the Court in *Carnes v. Smith*, supra, and *Coles v. Wilburn*, supra, the Court has ruled that other than a mere connectional relationship between a local and general church must be present to create an implied trust in favor of the general church.

Church polity is not the sole standard for resolving church property disputes. *Hull* and *Maryland and Virginia Eldership* attest.

Petitioners conclude their brief with the statement that if certiorari is granted they will argue that the neutral principles come into play only if no church procedures are available or have been followed. Such a proposition if accepted is tantamount to emasculating the neutral principles. The Petitioners do not seek the elimination of contrived confusion, they seek the eradication of equity. They advocate the return to doctrinal despotism in which the civil court becomes a surrogate of a church court.

The freedom heralded by this Court in *Hull* will be muted. The options now granted the states will be severely restricted, if not removed.

## 2.

In opposition to the second petition for certiorari in *Hull* (Case No. 384, October Term, 1969), the Respondents declared that the petition should be denied for the judgment of the Supreme Court of Georgia did not involve a Federal question. The same contention is declared here. The judgment of the Georgia Court does not involve a Federal question.

In rendering its decision the Supreme Court of Georgia focused on neutral criteria—deeds, corporate charter,

and the denomination's constitution. The examination of the Constitution (Book of Church Order) was limited to sections 6-1 and 6-2. None of these sections vest the Presbyterian Church in the U.S. with a proprietary or contractual interest in local church property. These sections vest sole control of church property in the congregation.

When the Georgia Court in *Hull* on remand awarded the control of property according to legal title as a matter of local property, it ruled consistently with the direction of this Court:

"And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. at page 449.

The decision of the Georgia Court in the case sought to be reviewed leaves the parties where they have put themselves. Legal title was never transferred to the general church. Its constitution does not vest it with any proprietary interest.

The absence of a Federal question in this case was initially found when this case was before the United States Court of Appeals, Fifth Circuit (*Lucas v. Hope*, 515 F. 2d 234 (5 Cir. 1975), cert. denied, 424 U.S. 967 (1976)). That Court held that questions involving title and possession of real estate must be decided under state law where no Federal question is present.

The character of the case has not been altered because of its course within the Courts of Georgia. This case comes before this Court again void of any Federal question.

The Petitioners find themselves in an ironic and untenable position. They seek the aid of the judicial branch

of the Federal government to overrule the application of neutral principles of local law by the Georgia Court. The principles applied were in compliance with a directive from this Court. Such assistance is prohibited. This Court has ruled:

"Neither a state nor the Federal Government can openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state'." *Everson v. Board of Education*, 330 U.S. 1, 16 (1946).

#### IV.

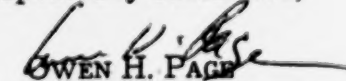
#### CONCLUSION

The Georgia Supreme Court decision now requested to be reviewed by the Petitioners violates no provisions of the U.S. Constitution. *First*. It was based on neutral principles of law. As such it is completely consistent with this Court's decisions in previous certiorari proceedings. *Second*. As the Georgia Court reached its decision free of any doctrinal considerations, it did not offend any of this Court's prior rulings in *Hull*, *Maryland and Virginia Eldership* or *Serbian Eastern Orthodox Diocese*.

The Supreme Court of Georgia's decision is constitutionally sound.

The petition for writ of certiorari should be denied.

Respectfully submitted,

  
OWEN H. PAGE

Attorney for Dr. G. Aiken Taylor,  
Moderator of the Presbyterian  
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Curiae



**CERTIFICATE OF SERVICE**

I, Owen H. Page, of counsel for Dr. G. Aiken Taylor, Moderator of the Presbyterian Church in America, hereby certify that I have served a copy of the foregoing brief by depositing a copy of the same in the United States mail, properly stamped and addressed to each of the following:

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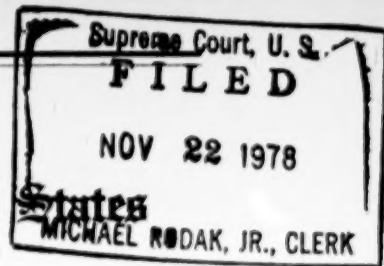
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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM 1978



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No. 78-91

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*Respondents*.

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**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA**

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**BRIEF FOR THE PETITIONERS**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1978

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No. 78-91

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R. W. JONES, SR., *et al.*,  
*Petitioners,*

v.

CHARLES T. WOLF, *et al.*,  
*Respondents.*

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**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA**

---

**BRIEF FOR THE PETITIONERS**

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**OPINIONS BELOW**

The unreported opinion of the Superior Court of Bibb County, Georgia, is reprinted at pages 1a-10a of the Appendix to the Petition for a Writ of Certiorari ("Pet. App."). The opinion of the Supreme Court of Georgia is reported at 241 Ga. 208, 243 S.E.2d 860 (1978), and is reprinted at Pet. App. 11a-16a.

## JURISDICTION

The judgment of the Supreme Court of Georgia was entered on April 4, 1978, and its order denying a timely petition for rehearing was entered on April 19, 1978. The Petition for a Writ of Certiorari was filed on July 17, 1978, and was granted on October 10, 1978. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

## QUESTION PRESENTED

Whether, in resolving this controversy between two competing factions of a local church, the civil courts were required by the First Amendment to defer to the pertinent hierarchical church court decision concerning which of the two factions constitutes the "true congregation" of that local church.

## CONSTITUTIONAL PROVISIONS INVOLVED

### U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof \* \* \*.

### U.S. Const., Amend. XIV, Sec. 1:

\* \* \* nor shall any State deprive any person of life, liberty, or property, without due process of law \* \* \*.

## STATEMENT OF THE CASE

This is a religious controversy concerning which of two factions constitutes the "true congregation" of the Vineville Presbyterian Church in Macon, Georgia. Resolution of the controversy affects, among other things, property rights—control and use of the assets of the named church. The controversy was presented to the appropriate church court (the Augusta-Macon Presbytery), which determined that the group represented by petitioners constitutes the "true congregation." Thereafter, however, the civil courts of Georgia reviewed and rejected the church court's decision in the matter, declared the group represented by respondents to be the true congregation of the Vineville Presbyterian Church, and awarded the latter use and control of the church's property. The controversy is now before this Court to determine whether the actions of the Georgia civil courts violated the First Amendment, as applied to the states through the Fourteenth Amendment.

The facts essential to a resolution of the question presented are not in dispute. They were the subject both of a stipulation between the parties in the Georgia trial court and of detailed findings by that court, and they can be briefly summarized.

The Vineville Presbyterian Church ("VPC") was organized in 1904, and, in that same year, upon its petition VPC was established as a Local Member-Unit of the Augusta-Macon Presbytery of The Presbyterian Church in the United States ("TPCUS"). Joint Appendix ("JA") 316. TPCUS is organized in a hierarchical, or connectional, form of government, as contrasted with a congregational



form. Pet. App. 3a, 6a.<sup>1</sup> Its hierarchical structure was found by the Georgia trial court to be as follows:

Generally, TPCUS is organized so that a Local Unit is governed by its Session; the Sessions of the Local Church are governed by what is known as a Presbytery which governs several Local Church Units in a particular area; the Presbytery is governed by a Synod which is over all Local Units and Presbyteries within a State; and the Synods are governed by the General Assemblies [sic] which in turn governs all Local Church Units, Presbyteries and Synods in the United States.

[Pet. App. 3a-4a.]

The details of the various duties and powers of the several levels within the described church hierarchy, and the procedures by which each implements its duties and powers, are set forth in *The Book of Church Order*. JA 11.<sup>2</sup> As will be later described, it was

<sup>1</sup> These two distinct forms of church government, long recognized and understood by this Court, need not be detailed here. Mr. Justice Miller succinctly distinguished them for the Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 722-723 (1871), defining a local congregational church as one "which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority," and a local hierarchical church as "a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory of the whole membership of that general organization." It is unquestioned that VPC is in the latter category.

<sup>2</sup> The edition of *The Book of Church Order* which was in effect at the time of the instant religious controversy, and which governed the proceedings in both the church tribunal and the Georgia civil courts, was the Fourteenth Printing (1972). See JA 316; Pet. App. 3a. This edition is reprinted at JA 11 - 227.

pursuant to the provisions of that book that the controversy now before this Court was adjudicated by the appropriate church court, the Augusta-Macon Presbytery.

On May 27, 1973, the VPC membership split into two factions, represented here by petitioners and respondents. On that date, 165 members (respondents) voted to adopt a resolution declaring that

The Congregation of the Vineville Presbyterian Church, Inc. desires to be at peace and to proclaim the Good News of Jesus Christ, adhering closely to the Bible as the infallible Word of God, and to the doctrines originally stated in the Westminster Confession of Faith, and \* \* \* desires to separate with our property \* \* \* from Augusta-Macon Presbytery and the Presbyterian Church in the United States \* \* \* [and] therefore \* \* \* resolve[s] that [VPC] does now declare itself to be an independent and self-governing church, \* \* \* [and] further resolve[s] that any and all connections, control, jurisdiction, and/or oversight of said Augusta-Macon Presbytery and any other judicatory or commission of the Presbyterian Church in the United States with the Vineville Presbyterian Church, Inc. be and the same hereby are severed and dissolved. [JA 228.]

Ninety-four members (petitioners) voted against adoption of the resolution. JA 231. That same day, respondents' group officially reported the congregational division to the Augusta-Macon Presbytery, stating:

The reasons for the action of the Congregation are well known to the Presbytery and to the denomination. The General Assembly of the Presbyterian Church in the United States has demonstrated repeatedly its arbitrary disregard of its covenant to preserve the purity and peace of the Church. [JA 233.]

The pastor also sent official notification to the Presbytery. JA 234.

In response to the split within VPC, the Augusta-Macon Presbytery, acting directly in accordance with *The Book of Church Order*, appointed a Commission to consider and, if possible, resolve the dispute. That Commission subsequently issued a written ruling declaring that petitioners' group constituted "the true congregation of Vineville Presbyterian Church" and withdrawing from respondents' group (which included the pastor) "all authority to exercise office derived from the Presbyterian Church in the United States." JA 235. Respondents did not appeal the Presbytery's decision in the controversy to any higher church tribunal, as they could have done pursuant to the governing church rules. *The Book of Church Order* §§ 113-117, JA 126-132.<sup>3</sup>

<sup>3</sup> It is not disputed, nor could it be, that the Presbytery was the appropriate court to review the schism within VPC, *The Book of Church Order* §§ 13-1, 14-5, JA 47, 49-50; that the schism was effectively brought within that court's supervision, *id.* at § 14-6, JA 50; that determination of VPC's "true congregation" was within the power of that court, *id.* at §§ 16-7, 111-3, JA 55-56, 124-125; and that the appointed Commission had full authority to exercise that power, *id.* at § 19-2, JA 62. Indeed, the Presbytery's adjudication of the "true" and rightful members of VPC constituted the very essence of that court's ecclesiastical authority:

Church courts possess the right of requiring obedience to the laws of Christ. Hence, they admit those qualified to

(footnote continued)

Notwithstanding this final decision rendered by the church court, respondents thereafter struck the names of petitioners' group from the rolls of VPC, JA 318-319, and, in addition, united themselves with the Presbyterian Church in America, a separate Presbyterian denomination wholly unconnected with TPCUS. JA 318. Moreover, at all times since May 27, 1973, respondents have retained possession and control of VPC's property and have completely excluded petitioners' group from any use of that property in practicing their religion as a local unit of TPCUS. JA 318.

Title to the VPC property originally was acquired by recorded conveyance instruments. These instruments in one case transferred the property directly to VPC, JA 249, and in all other cases transferred it to trustees of VPC who were directed to hold the property for the "use, benefit and behoof" of VPC. *E.g.*, JA 248, 252. In a majority of these instruments, specific authorization was given to the trustees to deal with the property, but to do so "by complying with the rules and regulations of the Church only." JA 254, 257, 262, 265, 269.

(footnote continued)

sealing ordinances and to their respective offices and they exclude the disobedient from their offices or from sacramental privileges; but the highest censure to which their authority extends is to cut off the contumacious and impenitent from the congregation of believers. [*Id.* at § 14-3(4), JA 49.]

Furthermore, numerous other provisions of the church rules and regulations in force at the time of the dispute in the instant case emphasize that, in the event of a dispute, it is within the jurisdiction of the church courts to determine the identity of the true congregation. These rules are set out in more detail in the Brief of Amicus Curiae The Presbyterian Church in the United States.



Thus, since there was no question that the property was required to be held for the use and benefit of VPC, since there was also no question that petitioners had been determined by the appropriate church court to be the true congregation of VPC, and, finally, since respondents refused to honor that church court's decision, petitioners were obliged to file suit to protect and enforce their rights, including the use of VPC's property. Simply put, "[t]his case belongs to a class \* \* \* in which one of the parties to a controversy, essentially ecclesiastical, resorts to the judicial tribunals of the State for the maintenance of rights which the church has \* \* \* found itself unable to protect." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 713 (1871).

Petitioners' equitable action was brought in the Superior Court of Bibb County, Georgia, requesting a declaratory judgment that petitioners were entitled to the use of the VPC property, and an injunction preventing respondents from further excluding petitioners from the property. JA 2-9.<sup>4</sup> That court, after reviewing the stipulated facts previously described, stated that it had found "nothing in the deeds, the applicable Georgia statutes regarding religious corporations, TPCUS Book of Church Order or Discipline, or the Corporate Charter of the VPC to indicate any express or implied trust in favor of any

<sup>4</sup> Petitioners initially brought this action in federal court, since they assumed that respondents were relying upon a Georgia statute that petitioners claimed was unconstitutional. However, when respondents stipulated that they were in no way relying upon this statute, the federal court dismissed for lack of jurisdiction, holding that the basic dispute arose under state property law, even though federal constitutional issues ultimately might arise. See *Lucas v. Hope*, 515 F.2d 234, 236-237 (5th Cir. 1975), cert. denied, 424 U.S. 967 (1976).

group other than the local congregation of VPC." Pet. App. 9a. The court then concluded "as a matter of law that legal title to all the church property of VPC is vested in the local church which is represented by defendants." Pet. App. 9a. The court did not explain how it reasoned from the proposition that the "church property of VPC is vested in the local church" — an issue that was never in doubt and which all parties had conceded — to the conclusion that the "local church \* \* \* is represented by [respondents]." Neither did the court suggest how it constitutionally could reach the latter conclusion in the face of a contrary decision which it found as a fact to have been rendered by the church court.

On appeal, notwithstanding petitioners' arguments that the First Amendment required deference to the church court's decision regarding which group represented VPC, the Supreme Court of Georgia affirmed the trial court. That appellate court, as had the lower court, simply reviewed the deeds, state statutes, and *The Book of Church Order* to determine whether the general church (TCPUS) had any enforceable property rights in the local church's (VPC's) assets. Finding no such property rights expressed or implied in those documents, and confirming the trial court's view that "more than a mere connectional [hierarchical] relationship between the local and general church must exist to give rise to property rights in the general church," Pet. App. 15a-16a, the state supreme court pronounced title to be in the local church and respondents to be the representatives of that church. Pet. App. 16a.

As had the lower court, the state supreme court purported to premise its decision on "neutral



principles of law." Pet. App. 7a-9a, 13a-15a. Yet that court, like the lower court, failed to identify which "neutral principles" it was relying on either to determine the "true" representatives of the local church, or to reject the contrary determination of that same issue by the governing hierarchical church court.

### SUMMARY OF ARGUMENT

The only disputed issue in this case is and has been which of two competing factions of the Vineville Presbyterian Church — the group represented by petitioners or the group represented by respondents — constitutes the "true congregation" of that church. Since the church's property was held for the use and benefit of its members, whichever group was deemed to be the "true" membership would, as a matter of course, be entitled to control the property.

Since VPC is a member of a denomination which follows a hierarchical polity, it is subject to the decisions of church courts regarding such ecclesiastical issues as the identification of a member-church's "true congregation." Here, the appropriate church court determined that petitioners represented VPC's "true congregation." That determination was constitutionally binding upon the civil courts in the subsequent lawsuit brought to determine the correlative rights of the parties, including which group was entitled to the church property.

The Georgia courts violated the First Amendment by redetermining the identity of VPC's "true" congregation and, on the basis of that identification, awarding control of VPC's property to respondents. Civil courts may not directly reject a

church court's decision concerning an ecclesiastical issue, nor indirectly overrule it by substituting their own judgment on that ecclesiastical issue under the guise of "neutral principles."

Where, as in this case, a hierarchical church court decision can be identified which resolves an ecclesiastical matter at issue in the civil court dispute, the application of "neutral principles" to resolve that same matter is inappropriate and unconstitutional, for it is as much a rejection of the church's decision as an outright overruling of that decision. Furthermore, assuming *arguendo* that "neutral principles" may constitutionally be applied to overrule a church court resolution of an ecclesiastical issue—a conclusion which we strongly dispute—in this case there were no such "neutral principles" available by which to redetermine that issue. Thus, the Georgia courts violated the First Amendment by deciding that respondents are the true congregation of VPC.

### ARGUMENT

#### I.

#### THE GEORGIA CIVIL COURTS WERE CONSTITUTIONALLY REQUIRED TO ACCEPT THE CHURCH COURT'S DECISION THAT PETITIONERS ARE THE "TRUE CONGREGATION" OF THE VINEVILLE PRESBYTERIAN CHURCH.

There is no dispute in this case that The Presbyterian Church in the United States is a hierarchical, or connectional, religious organization; that the Vineville Presbyterian Church was, on the day

this controversy arose, a Local Member-Unit of that organization; and that, as a Local Member-Unit, VPC, along with its members, was subject to the authority of the various hierarchical church courts within TPCUS. There is also no dispute that on May 27, 1973, a doctrinal division occurred within the membership of VPC; that the division was appropriately reviewed by a duly-appointed Commission of the Augusta-Macon Presbytery; and that it was the decision of that ecclesiastical tribunal that petitioners constitute the "true congregation" of VPC. Respondents did not appeal that decision. They have not attacked the propriety of the procedure followed, and have never contended that the church decision was tainted or improper.

In petitioners' view, these undisputed facts should have been sufficient to foreclose any secular inquiry regarding the identity of VPC's authorized representatives. But the undisputed facts were not sufficient for the courts below. On September 29, 1977, the Superior Court of Bibb County, Georgia, overruled the Presbytery's decision, finding that "VPC \* \* \* is represented by [respondents]." Pet. App. 9a. On April 4, 1978, the Supreme Court of Georgia approved this conclusion, stating that "the local church congregation [is] represented by the [respondents]." Pet. App. 16a. These civil court redeterminations of an ecclesiastical matter already resolved by the governing church tribunal are unconstitutional.

This Court has declared, over and over again, that once the appropriate church court in a hierarchical religious organization has resolved an ecclesiastical issue, that resolution binds the civil

courts. This rule was first announced in *Watson v. Jones, supra*:

[T]he rule of action which should govern the civil courts \* \* \* is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these [hierarchical] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. [80 U.S. at 727.]

In *Watson*, as here, the issue was which of two competing factions should be recognized as the true congregation of a particular local church. *Id.* at 697, 714.<sup>5</sup> There, as here, the local church was a member-unit of a hierarchical religious association, *id.* at 681-683; and there, as here, when civil litigation was instituted to claim control of the church property, the appropriate church court had already decided which of the two factions constituted the true congregation. *Id.* at 691-694. Nevertheless, the Court of Appeals of Kentucky decided for the other faction, and thus "ended by overruling the decision of the highest judicatory of that church \* \* \* and substituting its own judgment for that of the ecclesiastical court \* \* \*." *Id.* at 734. This Court declared:

[I]t would \* \* \* lead to the total subversion of such religious bodies [hierarchical churches], if any one aggrieved by one of their decisions could appeal to the secular courts and have

<sup>5</sup> See *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 112-113 (1952).



them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. [*Id.* at 729.]

The principle that church court decisions on ecclesiastical matters must be accepted by the civil courts was repeated in *Gonzales v. Archbishop*, 280 U.S. 1, 16 (1929), was raised to constitutional dimensions in *Kedroff v. Saint Nicholas Cathedral, supra*, 344 U.S. at 115-116, and was given categorical reaffirmation by this Court only two years ago in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-725 (1976):

[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

The *Serbian* Court made plain that decisions of ecclesiastical tribunals bind the civil courts not only as to matters of faith, discipline, and doctrine, but also as to disputes touching church government, administration, and polity. 426 U.S. at 717, 721-722. The dispute in the instant case surely fits within

these areas. It was identification of the true congregation and its ruling elders that was at issue in *Watson*, the selection of a chaplain in *Gonzales*, and the organization of a diocese and naming of a bishop in *Serbian*. In the latter case, this Court held that there was no dispute that "questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern; the bishop of a church is clearly one of the central figures in such a hierarchy and the embodiment of the church within his Diocese \* \* \*." *Id.* at 717.

Here we deal not with the "embodiment" of the church, but with the very body of the church itself, and the essence of its organization: the designation of those who may share its membership. We take it to be undisputed that such a determination is similarly "at the core of ecclesiastical concern," and that it, too, is a matter beyond the jurisdiction or competence of the civil courts. As this Court has said: "Our only judicial power in the case arises from the conflicting claims of the parties to the church property and the use of it. We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church." *Watson v. Jones, supra*, 80 U.S. at 730.<sup>6</sup>

<sup>6</sup> *Accord, Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139-140 (1872):

[W]e have no power to revise or question ordinary acts of church discipline, or of excision from membership. \* \* \* [W]e cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off. We must take the fact of excommunication as conclusive proof that the persons excised are not members.



The Augusta-Macon Presbytery has determined—conclusively—that respondents are not members of and do not represent the Vineville Presbyterian Church, and that, in fact, petitioners are the only true congregation of that church. It being agreed that VPC owns the property at issue here and that such property is held for the use and benefit of VPC's members, respondents should have acceded to petitioners' claims to that property.

But respondents have refused to do so. They have not accepted the Presbytery's judgment. They have declared themselves independent of TPCUS authority, JA 228, 233, and have joined a different hierarchical church, JA 318. Petitioners do not challenge respondents' unquestioned privilege to leave VPC; but respondents cannot at the same time declare themselves "the church," retain the church property, and exclude petitioners from their own use of the church and its religious processes. That much at least was decided by this Court as early as *Watson*, and it should have been followed by the Georgia civil courts:

[T]he appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action, and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, the appellants, in their present position, have no right to the property,

or to the use of it, which is the subject of this suit. [80 U.S. at 734.]

Having concluded that the property in dispute belonged to the membership of VPC, and having been apprised that the appropriate ecclesiastical tribunal had determined that membership to be represented by petitioners, the lower civil courts' role was at an end. Their decision to go further—to redetermine the identity of VPC's true representatives and overrule the church court's judgment on that issue—violated the First Amendment. That decision should be reversed by this Court.

## II.

### THE GEORGIA CIVIL COURTS WERE NOT PERMITTED TO REJECT THE CHURCH COURT'S DECISION UNDER THE GUISE OF "NEUTRAL PRINCIPLES."

Respondents and the lower civil courts do not so much disagree with the foregoing discussion as they ignore it. Thus, as respondents broadly conceded in their opposition to the Petition for a Writ of Certiorari:

[T]he present law in Georgia concerning church property disputes places no significance on the actions of any church judicatories \* \* \* .  
[Brief for Respondents in Opposition at 2.]

That characterization fairly states the Georgia Supreme Court's treatment of the Presbytery's decision; indeed, that court attributed so little significance to the ecclesiastical tribunal's resolution of the matter

at issue that that resolution was only fleetingly cited and then not even discussed in the court's opinion.<sup>7</sup>

The explanation for this lies in the Georgia courts' misapplication of a doctrine developed by this Court as an appropriate method of resolving some church property disputes under limited—and apparently misunderstood—circumstances. The doctrine, referred to as "neutral principles of law," was first mentioned by this Court in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1968) ("*Hull*"), and its application was given sanction in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367 (1970) ("*Sharpsburg*"). Because a misinterpretation of these two cases underlies the lower courts' decisions herein, it will be helpful to recite those cases' facts and holdings.

*Hull*, *supra*, presented a hierarchical church (TPCUS, as in the instant case) dispute between the general church and certain of its local member-churches over which was entitled to the use of the local churches' property. The controversy was precipitated by the local churches' attempt to withdraw from the general church, and the latter's attempt then to take possession of the local churches' property. 393 U.S. at 441-443. The Georgia courts ruled as a matter of state law that the property was held subject to an implied trust in favor of the general church, *so long as* the latter did not depart from its established doctrine. Hence, in order to

<sup>7</sup> The court ignored that church court decision despite petitioners' repeated reliance on it in the briefs filed below. See, e.g., Brief for Appellants, filed Dec. 8, 1977, at 10-11, 13-14, 15.

resolve the property dispute, the Georgia courts were obliged to determine whether a departure from doctrine had occurred—a matter "at the very core of a religion." *Id.* at 450. "Plainly," said this Court, "the First Amendment forbids civil courts from playing such a role." *Id.* Consequently, this Court reversed the Georgia Supreme Court's decision, stating in pertinent part:

[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded.* But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. \* \* \* [T]he Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require



the civil courts to resolve ecclesiastical questions. [*Id.* at 449 (emphasis added).]

During the Term after *Hull* was decided, the Court had occasion to demonstrate and approve the appropriate application of "neutral principles of law" to a church property dispute.<sup>8</sup> In *Sharpsburg*, *supra*, a majority of the congregation in two individual Churches of God voted to withdraw from their association with the Maryland and Virginia Eldership of the Churches of God. The Eldership refused to recognize the withdrawal; it issued a "judgment" declaring the dissenting minorities in each church to be the "true congregation" thereof and then brought suit both to prevent the withdrawals and to have the minorities declared to be the rightful owners of the individual churches' property. *Sharpsburg*, *supra*, 249 Md. 650, 653-655, 241 A.2d 691, 693-694 (1968), *vacated and remanded*, 393 U.S. 528, *reaffirmed*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed*, 396 U.S. 367 (1970).

The Maryland Court of Appeals, by looking to the local churches' bylaws and corporate charters and to the Eldership's Constitution, determined, first, that the local churches were congregational in nature and wholly independent of the Eldership, at least insofar as their individual property was concerned. 249 Md. at 664, 671, 674, 241 A.2d at 699, 703, 705; 254 Md. at 170-175, 254 A.2d at 168-170. Having made that

<sup>8</sup> During the same Term it decided *Sharpsburg*, the Court denied, for reasons which of course were unstated, a petition for a writ of certiorari to review the Georgia Supreme Court's further decision in *Hull* after remand from this Court. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 396 U.S. 1041 (1970).

determination, the Maryland court then considered the language of the local church deeds, those churches' pertinent bylaws, and the applicable state property law, and concluded that in these particular congregational churches, a majority of their voting members was entitled to control of the churches' assets. 249 Md. at 656-660, 665-666, 677, 241 A.2d at 695-697, 700, 707; 254 Md. at 166-176, 254 A.2d 166-170.

On appeal, this Court first remanded the case for reconsideration in light of *Hull*, 393 U.S. at 528; however, after the Maryland Court of Appeals reaffirmed its decision on the same reasoning that underlay its original decision, 254 Md. at 164, 178, 254 A.2d at 165, 171, this Court dismissed the second appeal "for want of a substantial federal question," 396 U.S. at 368. The *per curiam* dismissal of the appeal turned on the fact that the Maryland court had been able to resolve the church property dispute upon the basis of state property law, the church deeds, the corporate charters, and the portions of the Eldership Constitution dealing with ownership and control of church property, without having to confront any religious issue whatever. *Id.* at 367-368.

In a concurring opinion, Mr. Justice Brennan first reiterated that "[T]he [First] Amendment \* \* \* commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Id.* at 368, *quoting Hull*, *supra*, 393 U.S. at 449. He then described how the civil courts could, depending upon the circumstances of the given case, adhere to this command. First, they might be able simply to "enforce the property decisions" made by the appropriate decision-making



body within the church itself; second, they might find it necessary to apply "[N]eutral principles of law, developed for use in all property disputes," 396 U.S. at 370, quoting *Hull*, *supra*, 393 U.S. at 449, but not "if their application requires civil courts to resolve doctrinal issues," *Sharpsburg*, *supra*, 396 U.S. at 370; and third, they might be required to apply any specially-adopted state statutes which govern "church property arrangements in a manner that precludes state interference in doctrine." *Id.*

In any given case, the concurring opinion noted, the choice of the appropriate approach could be expected to be a function of which one would avoid the civil court's encroachment upon the church's exclusive right to resolve ecclesiastical issues. See 396 U.S. at 370 n.4. Thus, "neutral principles of law" would be inappropriate if, as in *Hull*, those principles would not fully resolve the dispute without the court, in addition, having to determine an ecclesiastical question. Similarly, deference to the decision of the relevant church governing body would be inappropriate if the very identification of that body could not be made without first deciding some ecclesiastical question. *Id.*

Respondents, the Superior Court of Bibb County, and the Supreme Court of Georgia have all read this Court's decisions in *Hull* and *Sharpsburg* for this proposition: in church property disputes, state civil courts may, if and when they so choose, reject the decision of a governing church court on an ecclesiastical question which is at issue in the dispute and, by applying "neutral principles of law," substitute their own judgment on that ecclesiastical question. For two fundamental reasons this

proposition, and its application in the present case, cannot be reconciled with the First Amendment.

First, in cases where seemingly "neutral principles of law" can be determined and might otherwise be sufficient to fully resolve church property disputes, those principles are in fact *not* "neutral," should not be applied, and cannot constitutionally be followed in the face of a contrary church court resolution of the dispute. Second, assuming *arguendo* that civil courts were constitutionally free to reject church court decisions and apply "neutral principles of law" to resolve ecclesiastical issues contrary to the church courts, in this case there were no such "neutral" principles upon which to base such a contrary resolution. Either of these reasons is sufficient to demonstrate the unconstitutionality of the Georgia courts' decisions. These reasons will be discussed in turn below.

#### A. Civil Courts Cannot Constitutionally Rely on "Neutral Principles" to Overrule an Authoritative Church Court Decision.

The courts below were of the view that they were not required to follow the deference-to-church-courts rule of *Watson* and *Serbian*, so long as they could dispose of the case pursuant to the "neutral principles" doctrine of *Hull* and *Sharpsburg*. What this view fails to recognize is that the doctrine of neutral principles is not an interchangeable substitute for, or an unfettered alternative to, the deference rule; it is a *necessary corollary* to that rule and comes into play *only if* there is no controlling church decision to which deference can be given.

Both the deference approach, as well as the neutral principles approach endorsed in *Hull* and *Sharpsburg*, are designed to ensure that church property disputes will be resolved without the civil courts unconstitutionally encroaching upon the churches' exclusive authority to decide ecclesiastical matters.<sup>9</sup> Thus, in a sense the deference rule is itself a "neutral principle of law." It provides a method for civil court resolution of church property disputes which will, at the same time, preserve the First Amendment's "neutrality" command that civil courts not interfere with or overrule church court decisions affecting the dispute. The necessary corollary to the rule—the *Hull-Sharpsburg* neutral principles approach—recognizes that there will not always be an identifiable hierarchical church court decision to which to defer. See *Sharpsburg*, *supra*, 396 U.S. at 370 n.4. When that is so, as it was in *Sharpsburg*, the civil courts are obliged to find another method of resolving the dispute (such as reference to formal title); however, that method, too, must strictly observe the constitutional command that civil courts not intrude upon the churches' exclusive ecclesiastical preserve. *Id.*; *Hull*, *supra*, 393 U.S. at 449-450.

Thus, this Court's decisions require deference when there is a hierarchical church court decision on the controlling issue. The neutral principles approach comes into play *only* when the deference approach will not resolve the dispute. The Georgia courts,

<sup>9</sup> See generally McKeag, *The Problem of Resolving Property Disputes in Hierarchical Churches*, 48 PA. BAR ASS'N Q. 281 (1977); Note, *Serbian Eastern Orthodox Diocese v. Milivojevich*, *The Continuing Crusade for Separation of Church and State*, 18 WM. & MARY L. REV. 655 (1977).

however, have treated the two approaches as if they were interchangeable, allowing a civil court to pick whichever one it wishes in any given case. In effect, those courts have used the neutral principles doctrine as a method of accomplishing, indirectly, what the deference rule forbids: the overruling of the governing ecclesiastical court on the very question at issue. In this, the Georgia courts have done much the same thing the Illinois courts did in *Serbian*.

In that case, the issue concerned the decision of the general church in a hierarchical structure to reorganize its American-Canadian Diocese into three new diocese. There, as here, this general church decision was an ecclesiastical one affecting control of church property. And there, as here, the state supreme court redetermined that ecclesiastical matter, "rel[ying] on purported 'neutral principles' for resolving property disputes which would 'not in any way entangle this court [the Illinois Supreme Court] in the determination of theological or doctrinal matters.'" *Serbian*, *supra*, 426 U.S. at 721, quoting 60 Ill. 2d 477, 505, 328 N.E.2d 268, 282 (1975). Even though the Illinois Supreme Court may have relied on "neutral principles" to overrule the church court decision, "[n]evertheless," said this Court, the effect of that reliance was to "substitute" the civil court's judgment for that of the authorized ecclesiastical tribunal. "This the First and Fourteenth Amendments forbid." 426 U.S. at 721.

We respectfully submit that the implications of *Watson*, *Hull*, *Sharpsburg* and *Serbian* for the present case are clear: a hierarchical church court resolution of an ecclesiastical matter is binding upon any civil court wherein that same ecclesiastical matter is at



issue; such civil court may not, either directly or indirectly—under the guise of “neutral principles,” or otherwise—reject, ignore, overrule, or substitute its judgment for the church court’s decision. Any other prescription, we submit, would invest civil courts with an unbridled, unprincipled discretion to choose at will between varying methods of resolving disputes in a religious context. Thus, if the Georgia court’s treatment of this case were correct, it would mean that civil courts may, when they like, accept the governing church court’s disposition of a doctrinal controversy; however, if that disposition would cause the particular property dispute to be resolved against the disputant whose doctrinal position the civil courts themselves would have endorsed, then the civil courts are entitled to follow “neutral principles” of law and thus reverse the outcome dictated by the church court decision.

By so describing the necessary results of the rulings below, we do not and need not attribute improper motives to any civil court. We mean only to illustrate the destruction of First Amendment “neutrality” threatened by the Georgia courts’ standardless approach. This Court has declared that civil courts are constitutionally obliged to resolve church property disputes free of all entanglements in those disputes’ underlying religious controversies. If that obligation is to be met, civil courts must not be free, willy-nilly, to accept or reject governing church court resolutions of those underlying religious controversies, and then to cite the appropriate theory—the deference-to-church-courts rule, or the “neutral principles” doctrine—as the particular outcome directs. A standard for choosing between the

two theories is required if the First Amendment’s strict-neutrality command is to be obeyed.

Because of the need for such a standard, and because of the confusion that exists among the courts concerning their permissible discretion in the matter,<sup>10</sup> we urge the Court to make explicit in this case what we believe was implied in its previous decisions: that the civil courts must follow the pronouncement of a governing hierarchical church adjudicatory body upon an ecclesiastical question in any church-property dispute wherein that ecclesiastical question is at issue, and that other “neutral principles of law” may be resorted to only where such a governing church court decision is not

<sup>10</sup> Compare, e.g., *First Presbyterian Church v. United Presbyterian Church in the United States*, 430 F. Supp. 450 (N.D.N.Y. 1977) (civil courts must defer to hierarchical church court decisions); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865 (Tex. Civ. App. 1977) (same), with, e.g., *Kelley v. Riverside Blvd. Independent Church of God*, 44 Ill. App. 3d 673, 358 N.E.2d 696 (1976) (First Amendment does not require deference to church court decisions); *Board of Church Extension v. Eads*, 230 S.E.2d 911, 919 n.6 (W. Va. 1976) (deference to hierarchical church court decision required only when “a case is not susceptible to the application of completely neutral principles of law”). See generally Annot., *Determination of Property Rights Between Local Church and Parent Church Body: Modern View*, 52 A.L.R. 3d 324 (1973).

The Court may wish to note, furthermore, that in *Mills v. Baldwin*, 362 So.2d 2 (Fla. 1978), the case virtually identical to this one in which the Supreme Court of Florida resolved the matter precisely opposite to its resolution by the Supreme Court of Georgia in this case, a petition for rehearing was denied on September 28, 1978 (the Florida Supreme Court’s original decision is reprinted in the Appendix to our Reply Memorandum, filed August 24, 1978). We have been informed by counsel in *Mills* that a petition for a writ of certiorari will be filed with this Court in December 1978.



and will not be available. No other rule will prevent civil courts from setting aside church court decisions at will. No other rule will stop civil courts from accepting those decisions only if they choose, but rejecting them if for some unstated reason they prefer in a given case to follow an ironically-named "neutral" principle instead. No other rule will prevent civil courts from reviewing those ecclesiastical decisions on their merits and, having found those decisions unpalatable, adopting "neutral principles" to, in effect, reverse them on other grounds. In short, no other rule but the stated one accords with the First Amendment.

The rule, furthermore, would lend certainty to a now-unsettled area of the law,<sup>11</sup> would give needed guidance to civil courts regarding the appropriate approach to cases where two separate theories (deference and neutral principles) produce conflicting results, and would permit parties to religious disputes to direct their own conduct on the basis of that needed guidance. Indeed, if religious disputants were assured that their church adjudicatory bodies' decisions would be respected by the civil courts in *all* cases,<sup>12</sup> rather than from time to time being overturned on the basis of "neutral" principles, much inappropriate church-property litigation would surely be avoided.

<sup>11</sup> See note 10, *supra*.

<sup>12</sup> The only exception to this rule would be where the controlling church court decision is shown to have been a product of "fraud" or "collusion," *Serbian, supra*, 426 U.S. at 713. As noted above, no such contention has been or could be made in this case.

Moreover, parties displeased with church court rulings should not have any reasonable expectancy—even apart from First Amendment considerations—that the civil courts will relieve them (on "neutral principles" grounds) from their obligation to comply with the church court's decision. Members of hierarchical churches—including respondents here—have, as a matter of simple contract and private association law, bound themselves to adhere to the decisions of those churches' ruling hierarchies:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* [Watson, *supra*, 80 U.S. at 728-729 (emphasis supplied).]

\* \* \*

[T]he decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, *because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil*

associations. [*Gonzales, supra*, 280 U.S. at 16-17 (emphasis supplied) (footnotes omitted).]

*Accord, Kedroff, supra*, 344 U.S. at 122 (Frankfurter, J., concurring).

In *Serbian*, this Court concluded that decisions of adjudicatory bodies in private *religious* associations are, because of First Amendment considerations, entitled to even greater deference than decisions of similar bodies in nonreligious associations. *Id.* at 712-715. But even with the First Amendment aside, members of religious associations are surely entitled to *at least equal* deference for decisions of their private adjudicatory bodies. *See id.* at 728-730, 732 n.\* (Rehnquist, J., dissenting). But there is no such equal deference under the Georgia courts' approach.

An approach which would allow civil courts to reject ecclesiastical church court decisions out of hand, so long as some "neutral principles" unrelated to that decision are thought sufficient to dispose of the resulting property dispute, would allow both judicial nullification of the parties' agreement to be bound by the church court decision, and wholesale denigration of the private association law which gave rise to that agreement. It would, moreover, work a wasteful, unwarranted disregard of a private adjudicatory process expressly designed to deal with the ecclesiastical issues at hand.<sup>13</sup> Such an approach, in our view, not only offends the First Amendment, but offends all other pertinent policy considerations in play when private associational decisions are before the courts.

<sup>13</sup> The importance of this private adjudicatory process was recognized by this Court as long ago as *Watson*:

(footnote continued)

We urge the Court to reject this approach outright, and to hold that "neutral principles of law" are to be used as an aid in deciding issues in church property disputes only when those same issues cannot be resolved by deferring to an authoritative church court decision. The contrary approach of the Georgia courts is arbitrary, inefficient, unjust, and, most importantly, unconstitutional.

**B. There Were No "Neutral Principles" Upon Which the Georgia Courts Might Have Relied to Overrule the Authoritative Church Court Decision.**

Even should the Court determine that, as a matter of constitutional law, the state courts are free to reject hierarchical church court decisions by relying on "neutral principles of law," here there were no such principles. Here the sole disputed issue

(footnote continued)

Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so. [80 U.S. at 729, quoted in *Serbian, supra*, 426 U.S. at 714 n.8.]



was quintessentially ecclesiastical: given the doctrinal schism within the Vineville Presbyterian Church, who should be recognized as the "true congregation" of that church? The church court determined that petitioners' group is that "true congregation." The Georgia courts, however, declared respondents to be the authorized representatives of that church. One will search the Georgia courts' opinions in vain for a specific reference to the "neutral principle" upon which this ecclesiastical determination rests.

The purported "neutral principle" upon which the Supreme Court of Georgia apparently based its decision in this case was that "more than a mere connectional relationship between the local and general church must exist to give rise to property rights in the general church." Pet. App. 15a-16a. That may be so, but it has nothing to do with the issue in this case. This case is not a dispute between a general and local church over which owns certain church property. All are agreed that the local church owns and is entitled to the beneficial use of the property. The only disagreement is over who represents that local church and is thus entitled to the use of its property.

Perhaps because the Georgia courts had elected to follow the "neutral principles" doctrine in this case, they wished to characterize the issues here in a manner similar to those presented in *Hull* and *Sharpsburg*, the cases upon which the "neutral principles" doctrine is based. Whatever the explanation, the result was that the Georgia courts badly mischaracterized the issues.

Unlike *Hull*, this case is *not* one in which the general church has attempted to take possession of property belonging to the local church. As petitioners have repeated over and over in this litigation<sup>14</sup>—always to no avail—the general church (TPCUS) is not a party to this suit; it has never claimed, and does not now claim, any property rights in the local church (VPC). Indeed, there has never been any dispute whatever that "formal title" to the property whose control is at issue here is in VPC. The only question to be answered is: Who is VPC? Unlike *Sharpsburg*, where a search of the pertinent deeds, charters, bylaws, and state property law could reveal that the local churches were *congregational* in nature and were thus entitled to dispose of their property by majority vote, the question "who is VPC?" cannot be answered by a similar search.

*Hull* and *Sharpsburg* are simply not analogous to this case, and the Georgia courts' attempts to recast the real issues here will not make them analogous. Rather, the keys to this case, and the analysis that should have guided the lower courts, are in *Watson*, *Kedroff*, and *Serbian*.

In those three cases, as here, there was no question concerning where title to the property at issue lay. In all three, again as here, it was with the local, as opposed to the general, church. *Watson*, *supra*, 80 U.S. at 681, 683; *Kedroff*, *supra*, 344 U.S. at 96 n.1; *Serbian*, *supra*, 426 U.S. at 723 n.15. Likewise, in all three, right to the use of the property followed

<sup>14</sup> See, e.g., Supplemental Brief of Appellants, filed Jan. 27, 1978, at 2 ("No implied trust is involved \* \* \*"); Reply Brief for Appellants, filed Jan. 16, 1978, at 5 ("No implied trust on behalf of the parent church is at issue here \* \* \*").



simply as an incident of a purely ecclesiastical determination: in *Watson*, as in the present case, it followed from the naming of the true congregation, 80 U.S. at 720-722; and in *Kedroff and Serbian*, it was a function of the identification of the true clergy, 344 U.S. at 120-121, and 426 U.S. at 720, 723 & n.15. Significantly, in none of those three cases did this Court recognize or suggest that any "neutral principle" existed by which the civil courts might name the "true" members or "true" leaders of a church. As Mr. Justice Frankfurter stated in his concurring opinion in *Kedroff*: "this proceeding rests on a claim which cannot be determined without intervention by the State in a religious conflict." 344 U.S. at 121.

Understandably, then, the Georgia courts have offered no indication of the "neutral principle" governing their determination that respondents, rather than petitioners, represent the true congregation of VPC. We submit that there is no such principle.<sup>15</sup> Obviously, the Georgia courts had absolutely no authority to determine on any doctrinal basis that respondents' view was the "true" one. *Hull*, *supra*, 393 U.S. at 449-450. Neither could they deter-

<sup>15</sup> To the extent that a "neutral principles" approach allows consideration of state statutes on these issues, the Georgia statutes fully support petitioners here. Section 22-5507 of the Georgia Code provides that title to property may be held by churches or religious societies, and that such property "shall be fully and absolutely vested in such church or religious society \* \* \* according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively" (emphasis added). Thus, in this case state statutory law, too, requires deference to church rules and the adjudicatory bodies established by "the mode of church government."

mine that respondents, rather than petitioners, represented the group entitled to church membership. *Bouldin v. Alexander*, *supra*, 82 U.S. at 139-140; *Watson*, *supra*, 80 U.S. at 730. And they most assuredly could not, by fiat, "establish" VPC as a congregational, rather than a hierarchical, church, requiring that either its ecclesiastical or property decisions be determined by majority vote. *Kedroff*, *supra*, 344 U.S. at 122 (Frankfurter, J., concurring) ("It is said that an impressive majority \* \* \* adhere to the party whose candidate New York enthroned \* \* \*. Be that as it may, it is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads"). Compare *Sharpsburg*, *supra*, 249 Md. at 674, 241 A.2d at 705 ("[T]hat polity [of the Eldership] in regard to the property of the local church, is congregational. Indeed, if the General Religious Law of the State sought to impose a presbyterial polity upon the religious corporations formed under it, there would be grave danger of a possible 'establishment of religion' \* \* \*").

In regard to this latter point, it is important to note that the courts below simply assumed, and dictated, that the majority of every church's congregation in fact constitutes the congregation. Aside from the obvious First Amendment questions raised by such a categorical "majority rule" requirement, the requirement could in practice lead to fraud and collusion against hierarchical churches. As noted in the Brief of Amicus Curiae TPCUS, most Presbyterian churches have very small congregations—frequently as small as 25 or fewer members. Under an obligatory "majority rule" doctrine, 21

persons could join a local hierarchical church with a congregation of 20, promptly vote (21 to 20) to eject the now-minority members, and thereby summarily take over the church property (which in some instances could be very valuable indeed). The decisions below would countenance such a result even if the intruding group of 21 professed no religious beliefs whatever, and notwithstanding a hierarchical court church decision declaring the 20 members to be the true congregation of the church.

Thus, no "neutral principle" supports the result below. Instead, the Georgia courts simply took upon themselves an issue so altogether and utterly religious in nature that it will not admit to resolution by "neutral" principle. It could not be otherwise: a decision naming the "true" members of the church does not partake of civil law at all, neutral or otherwise. Such a decision is reached as a matter of pure faith and, on that basis, must be accepted by the civil courts.<sup>16</sup> *Serbian, supra*, 436 U.S. at 714. The Georgia courts' failure to do so renders their decisions unconstitutional.

<sup>16</sup> According to *The Book of Church Order* §14-2, the church court decision which declared petitioners' group to be VPC's "true congregation" could have been issued "only for the purpose of serving Christ and declaring his will as it is related to his doctrine and law, to the good order of the Church and to the exercise of discipline." JA 48.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be reversed.

Respectfully submitted,

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DEC 26 1978

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# In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-91

R. W. JONES, SR., et al.,  
*Petitioners,*

vs.

CHARLES T. WOLF, et al.,  
*Respondents.*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA

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**OPINIONS BELOW**

The opinion of the Georgia Supreme Court is reported at 241 Ga. 208, 243 S.E.2d 860 (1978) and is reprinted in the Appendix to the Petition for a Writ of Certiorari (P.A.) at 11a-16a. The unreported opinion of the Superior Court of Bibb County, Georgia is reprinted at P.A. 1a-10a.



## JURISDICTION

The Georgia Supreme Court entered judgment in this Action on April 4, 1978 and denied a Petition for Rehearing on April 19, 1978. This Court granted certiorari on October 10, 1978. Jurisdiction rests on 28 U.S.C. §1257(3).

## QUESTION PRESENTED

In a dispute confined to the use and control of real property owned by a local church where no religious questions are raised or decided by a state court, is the state court nevertheless constitutionally required to defer to the ruling of a general church administrative commission as to the control and use of the property?

## CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof \* \* \*.

U.S. CONST., Amend. XIV, Sec. 1:

\* \* \* nor shall any State deprive any person of life, liberty, or property, without due process of law \* \* \*.

## STATEMENT OF THE CASE

This is a dispute concerning the use and control of real estate owned by Vineville Presbyterian Church [hereinafter VPC], in Macon, Georgia.

On May 27, 1973, the VPC congregation adopted a resolution<sup>1</sup> separating the church and its property from continued affiliation with the Presbyterian Church in the United States [hereinafter PCUS], one of several Presbyterian denominations in this country. The majority, represented in this Court by respondents,<sup>2</sup> immediately notified PCUS of the action and subsequently became united with another Presbyterian denomination which has no affiliation with PCUS. J.A. 318. Respondents have at all times since their withdrawal from PCUS retained possession and control of the property and assets of VPC.

1. J.A. 228. The resolution provided in part:

WHEREAS: The Congregation of the Vineville Presbyterian Church, Inc. desires to separate with our property, real, chattels, and intangibles from Augusta-Macon Presbytery and the Presbyterian Church in the United States so as to become and constitute itself an independent church, and

WHEREAS: Such exercise of freedom is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America,

NOW THEREFORE, BE IT RESOLVED that the Vineville Presbyterian Church, Inc. does now declare itself to be an independent and self-governing church.

BE IT FURTHER RESOLVED that any and all connections, control, jurisdiction, and/or oversight of said Augusta-Macon Presbytery and any other judicatory or commission of the Presbyterian Church in the United States with the Vineville Presbyterian Church, Inc., be and the same hereby are severed and dissolved.

AND BE IT FURTHER RESOLVED that all matters concerning the Vineville Presbyterian Church, Inc., both spiritual and secular, shall be determined by the local Church Congregation and shall be carried out through its duly elected officers.

The congregation adopted the resolution by a vote of 165 to 94. Neither the minutes of the congregational meeting nor the resolution itself indicated any reasons, religious or otherwise, for the proposal. It is undisputed that the meeting of the congregation was validly called and conducted. See note 4, *infra*.

2. Respondents include the majority members of the congregation, the majority members of the Session, the pastor and two of the three trustees.

Following adoption of the resolution, petitioners<sup>3</sup> ceased participation in the affairs of VPC and have conducted their church activities at various other locations in Macon. They have been refused the privilege of using the VPC premises as an adjunct of PCUS, but not otherwise. J.A. 318. Indeed, petitioners' names were not dropped from the VPC church roll until June 3, 1976, over three years after they had ceased functioning as part of the congregation and two years after this litigation was commenced. J.A. 327.

Although the resolution of the congregation was adopted by a majority vote in conformity with the PCUS Book of Church Order<sup>4</sup> and was not prohibited by that document,<sup>5</sup> PCUS nevertheless appointed an administrative commission which issued an ex parte "ruling, order and judgment," J.A. 5, declaring that petitioners were the true congregation of VPC and withdrawing from respondents all authority derived from PCUS.<sup>6</sup> The commission further purported to declare that respondents had forfeited all their rights to VPC property. J.A. 5, 235.

3. Petitioners, adherents of PCUS, include three named individuals who now claim to be the trustees of VPC by virtue of action taken by petitioners some four months after the resolution of separation was adopted. The trial court ruled that the designation of these persons as trustees was ineffective insofar as this property dispute is concerned. P.A. 9a.

4. The PCUS Book of Church Order, 14th Printing (1972), was in effect at the time this controversy arose. Section 5-6 of the Book of Church Order provides for the adoption of resolutions at congregational meetings by a majority vote. J.A. 35.

5. At the time of this controversy, the Book of Church Order contained no prohibition against the withdrawal of a congregation without the approval of PCUS, although such a provision was added to the Book of Church Order subsequent to the withdrawal of VPC and numerous other local churches. The Book of Church Order, 15th Printing (1975), Section 4-2, J.A. 329.

6. Respondents had separated from PCUS prior to the appointment of the commission, did not participate in the commission proceeding, and, of course, did not "appeal."

Thereafter, petitioners filed a federal action which was dismissed for lack of federal jurisdiction. The United States Court of Appeals for the Fifth Circuit affirmed the dismissal and this Court denied certiorari. *Lucas v. Hope*, 515 F.2d 234 (5th Cir.), *rehearing denied*, 523 F.2d 1055 (5th Cir. 1975), *cert. denied*, 424 U.S. 967 (1976).

Subsequently, petitioners brought this action seeking a declaratory adjudication of their rights to the VPC premises and a permanent injunction preventing respondents from continuing to use this property in any manner other than as a unit of PCUS. Neither PCUS nor the Augusta-Macon Presbytery were parties to this action.<sup>7</sup>

The case was submitted on briefs and stipulated facts and was decided by the trial court without a jury. Petitioners asserted that they were the true trustees;<sup>8</sup> that they represented the true congregation as decreed by the PCUS commission; and that respondents were acting unlawfully in continuing to maintain possession and control of the church property to the exclusion of petitioners. Respondents contended that they had a right to withdraw from PCUS upon appropriate resolution of the congregation; that the PCUS commission had no authority over the VPC property<sup>9</sup> nor authority to name any of the

7. However, since petitioners' case is based solely on the ex parte ruling of the PCUS administrative commission, the issue before the Court is exactly the same as it would be if PCUS were the party plaintiff. This is in actuality a controversy between a general church (PCUS) as represented by petitioners, and a local church (VPC), as represented by respondents.

8. See note 3, *supra*.

9. Respondents never have denied the authority of PCUS to recognize any person or group it may choose as being in communion and fellowship with it and thus its "true congregation." The identity of the "true congregation" has never been an issue in this case. Respondents do challenge the authority of PCUS to control and divert the use of local church property. See Section III, *infra*.



petitioners as trustees of VPC; and that respondents were lawfully in possession of the church property.

The trial court initially recognized the holding of this Court that there are neutral principles of law, applicable to all property disputes, which can be applied in resolving church property litigation without determining controversies over religious doctrine. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1968) [hereinafter *Hull*]. The court then reviewed the neutral principles applied by the Georgia Supreme Court in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868 (1976) [hereinafter *Carnes*]. *Carnes* had adopted the neutral principles/formal title doctrine articulated by this Court in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 249 Md. 650, 241 A.2d 691 (1968), vacated and remanded, 393 U.S. 528, re-affirmed, 254 Md. 162, 254 A.2d 162 (1969), appeal dismissed, 396 U.S. 367 (1970) [hereinafter *Sharpsburg*]. In *Sharpsburg*, this Court sanctioned the examination of deeds, state statutes regarding religious corporations, church corporate charters, and provisions in church constitutions, as neutral principles of law which may be considered by civil courts without impermissibly intruding into doctrinal matters.

Utilizing the *Sharpsburg* neutral principles/formal title approach, the trial court first reviewed the history of title acquisition<sup>10</sup> by VPC to determine whether PCUS

10. The real estate which is the subject of this controversy was acquired by VPC in three tracts. The first of these was a conveyance in 1908 to P. S. Lowrey and J. T. Kinnett as trustees of VPC. J.A. 247. On April 29, 1915, the church was incorporated, J.A. 271, and this property subsequently was quit-claimed to the church corporation by the trustees. J.A. 249. The second

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had any enforceable property rights in the assets of VPC. The court concluded that there was nothing in the deeds, the applicable Georgia statutes regarding corporations,<sup>11</sup> the VPC corporate charter,<sup>12</sup> or the PCUS Book of Church Order to indicate any express or implied trust in favor of any group other than the local congregation of VPC. The court thus held that petitioners were not entitled to the relief requested and dismissed the complaint.

On appeal to the Georgia Supreme Court, petitioners argued that since they had remained loyal to PCUS, they automatically were entitled to the VPC property. *Jones v. Wolf*, 241 Ga. 208, 243 S.E.2d 860, 863 (1978). The Georgia Supreme Court rejected this sweeping contention,

Footnote continued—

parcel was acquired from A. E. Barnes, III, in 1956, J.A. 251, and the third from the Bateman family in 1960. J.A. 253, 256, 261, 264, 268. Both of these tracts were conveyed to trustees rather than to the church corporation. The corporation, however, was included in the Stipulation and the parties agreed that it would be bound by the outcome of these proceedings. There is no language in any of these deeds which creates a trust in favor of PCUS or any group selected or recognized by it. Similarly, there is no language providing that the property will revert to PCUS or a group recognized by it if the congregation attempts to withdraw from the denomination.

On six occasions over the years, VPC found it necessary to borrow money and conveyed title to its property as security for the repayment of these loans. J.A. 278, 282, 286, 294, 299, 306. Three of these instruments indicate that the security deed was being given pursuant to authority set forth in resolutions adopted by the congregational meetings of VPC. All of these deeds were executed by trustees. There is no mention of the Presbytery or other body in PCUS, or that PCUS had knowledge of, approved of, or had anything to do with these loans. Unlike at least one other Presbyterian denomination, J.A. 331, 334, there is no requirement in the PCUS Book of Church Order that the local church have the permission of a Presbytery to sell or mortgage its property.

11. See GA. CODE ANN. §§ 22-5507, 22-5508.

12. The charter, which was issued in 1915, entitled VPC to hold and own property in its own name without involvement by PCUS. J.A. 271.



stating that a general church such as PCUS must have more than "a mere connectional relationship" with the local congregation in order to acquire rights in the local church property. *Id.* The court opined that petitioners' argument sought a return to the implied trust theory previously rejected in *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied*, 396 U.S. 1041 (1970)<sup>13</sup> and was simply an effort to persuade the court to abandon the neutral principles enunciated in *Carnes*, 222 S.E.2d 322.

The court next examined the applicable deeds, the VPC corporation charter, Georgia statutes,<sup>14</sup> and the PCUS Book of Church Order to determine whether PCUS had rights in the VPC property. Finding that PCUS had no interest in the VPC property and that the trial court properly had applied the neutral principles/formal title

13. The *Eastern Heights* case was on remand from the decision of this Court in *Hull*, 393 U.S. 440.

14. The Court stated that:

"Appellants rely heavily on CODE ANN. §§ 22-5507 and 22-5508 which mandate that property conveyed to a church is vested according to the mode of church government or such rules of discipline exercised by such churches or religious societies respectively, and upon *Carnes*, which held that 'The statutes thus mandate that the church property be held according to the terms of the church government.' 236 Ga. at 38, 222 S.E.2d at 328. However, those statutes do not purport to give a general church any rights in local church property other than those rights set forth in the documents of church government. The *Book of Church Order*, Chapter 6, entitled 'Incorporation and Property of a Particular Church,' Sections 6-1, 6-2 and 6-3, fails to give rise to an express trust or any implied trust as defined by the General Assembly. Section 6-2, dealing with incorporated churches within the Presbytery, specifically provides that a church corporation may elect officers to hold and manage local church property and may buy, sell and mortgage such property under the authority and direction of such corporation, the membership of which includes every member of the congregation." 241 S.E.2d at 863.

approach of *Sharpsburg*, 396 U.S. 367, and *Carnes*, 222 S.E.2d 322, the Georgia Supreme Court held that petitioners were not entitled to the relief requested.

## SUMMARY OF ARGUMENT

The identity of the "true congregation" recognized by PCUS has absolutely nothing to do with the resolution of this dispute. Rather, the issue is simply the pre-existing relationship between VPC and PCUS and the powers, if any, which PCUS had with respect to the local church property.

The Georgia courts concluded that PCUS had no rights in the VPC property by applying neutral principles of law and the formal title doctrine and reached this conclusion without the consideration of religious doctrine or church polity and without rejecting, ignoring or overruling the decision of any ecclesiastical tribunal thereupon. No such issues were in dispute.

No decision of this Court mandates that a state must defer to the ruling of ecclesiastical tribunals regarding the right to possess and use real estate. Nor has this Court conditioned the application of the neutral principles approach upon the absence of a ruling by an ecclesiastical tribunal.

First Amendment values would clearly be jeopardized and freedom of religion would be inhibited by the adoption of the position espoused by petitioners.

## ARGUMENT

### I.

#### THE GEORGIA SUPREME COURT HAD VALIDLY ADOPTED THE NEUTRAL PRINCIPLES/FORMAL TITLE APPROACH IN *CARNES V. SMITH*, BEFORE CONSIDERING THE INSTANT CASE.

##### A. Civil courts may decide church property disputes employing any one of various approaches, so long as there is no consideration of doctrinal matters.

In *Hull*, 393 U.S. 440, 449, this Court held that "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." Subsequently, in a concurring opinion in *Sharpsburg*, 396 U.S. 367, 368-70, Mr. Justice Brennan stated that the "neutral principles" concept enunciated in *Hull* was merely one of at least three alternative approaches for settling church property disputes and explained that:

"A state may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith (emphasis in original)." 396 U.S. at 368.

The three approaches enunciated by Justice Brennan are: the deference approach of *Watson v. Jones*, 80 U.S. (13

Wall.) 679 (1872);<sup>15</sup> a statutory approach;<sup>16</sup> and the neutral principles/formal title doctrine. With respect to the latter approach, Justice Brennan stated that:

"'[N]eutral principles of law, developed for use in all property disputes,' [*Hull*] *supra*, at 449, provide another means for resolving litigation over religious property. Under the formal title doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Again, however, general principles of property law may not be relied upon if their application requires the civil courts to resolve doctrinal issues." 396 U.S. at 370.

##### B. Georgia has adopted the neutral principles/formal title approach.

Following this Court's reversal and remand in *Hull*, 393 U.S. 440, the Georgia Supreme Court eliminated the implied trust or deference approach as a means of resolving disputes over local church property in Georgia. *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied*, 396 U.S. 1041 (1970). The court observed that the applicable deeds placed title in the local churches and found that there was no basis for a trust in favor of the general church, PCUS. Accordingly, the court rendered judgment in favor of "the respective local

15. Under the implied trust rule of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), states may enforce the property decisions made within a church of hierarchical polity by the highest authority that has ruled on the dispute at issue. 396 U.S. at 368-70. See note 24, *infra*, and accompanying text.

16. The *Sharpsburg* Court noted that a second alternative is "the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine." 396 U.S. at 370.

churches."<sup>17</sup> When again faced with a church property dispute in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868 (1976), the Georgia Supreme Court adopted the neutral principles/formal title approach which this Court sanctioned in *Sharpsburg*, 396 U.S. 367, 370.<sup>18</sup>

*Carnes* involved a dispute over local church property in the United Methodist Church. The local congregation

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17. In *Hull*, the adverse parties were PCUS and the chairman of its administrative commission, rather than members of the minority faction of a local congregation. The relief sought, however, was identical to that requested here—PCUS wanted injunctive relief and a declaration that the property was to be held for the use and benefit of adherents of the general church. 224 Ga. at 65. In *Hull*, the commission and its chairman occupied positions identical to those of petitioners here. In its resolution, the commission noted that the local churches and ministers had withdrawn from the general church and that there was only one ruling elder left in each of the churches who did not agree with this action. However, rather than finding that these elders and any members who agreed with them were the "true congregations," the commission assumed original jurisdiction over the congregations and stated that it would undertake to provide services for those members who wished to continue in communion with the general church. *Id.* at 62-64. Even though the facts vary slightly, the thrust of the action of PCUS in both cases is the same. It undertakes to have its commission issue a ruling as to who is entitled to use the property of a local church and then seeks to have a civil court enforce that judgment under the deference theory.

18. *Sharpsburg* was pending before the Court at the time of the *Hull* decision and was remanded for reconsideration in light of that ruling. The Maryland Court of Appeals reviewed its previous decision, which is reported at 249 A.2d 691, and held that it had anticipated *Hull*, and that its ruling was in complete accord with the First Amendment principles announced in that case. 254 A.2d 162. Plaintiffs again appealed, contending that the result contravened First Amendment principles. This Court dismissed for want of a substantial federal question. Votes to dismiss for lack of a substantial federal question are votes on the merits of a case. *Hicks v. Miranda*, 422 U.S. 345 (1975). While such votes do not necessarily embrace the reasoning and analysis employed in the court below, they do "without doubt reject the specific (federal) challenges presented in the statement of jurisdiction and . . . leave undisturbed the judgment appealed from." *Mandel v. Bradley*, 432 U.S. 173, 176 (1977).

refused to allow the use of its property as part of the United Methodist Church. The Georgia Supreme Court affirmed an injunction for the general church.

After noting its elimination of the deference approach in *Hull*, the *Carnes* court reviewed the *Sharpsburg* decisions and concluded that the criteria set forth therein were instructive as to what neutral principles of law might appropriately be considered. It reviewed the language of the deeds, the appropriate Georgia statutes and the general church constitution. Since the Discipline of the church required that all property be held in trust for the local church and the general church, the court concluded that the necessary factors were present to award the use of the property to the general church and its representatives.

## II.

### THE NEUTRAL PRINCIPLES/FORMAL TITLE APPROACH WAS APPLIED PROPERLY IN THE INSTANT CASE.

The Georgia Supreme Court applied the neutral principles/formal title approach in the present case and completely avoided the resolution of any underlying issues of religious doctrine or polity. The court examined the deeds, the VPC corporate charter, the Georgia statutes dealing with property held by religious organizations, and the provisions in the PCUS constitution concerning local church property. Finally, the court held that the mere connectional relationship between VPC and PCUS was not sufficient to empower PCUS to control the use and direction of this property and that there was no other had resolved to withdraw from the general church and



basis upon which such control could rest.<sup>19</sup> This result is completely in accord with *Carnes*,<sup>20</sup> which in turn is based upon one of the approved formulas articulated in the *Sharpsburg* litigation. None of the constitutional limits delineated by this Court were transgressed in the process.

### III.

#### THE GEORGIA COURTS WERE NOT REQUIRED TO DEFER TO THE DECISION OF THE PCUS COMMISSION WHICH HAD NO AUTHORITY OVER THE VPC PROPERTY.

No decision of this Court has held that a state court is constitutionally bound to defer to church tribunals which issue judgments determining the right to use and control real estate. A denomination can, by means of a church adjudication process, recognize or designate any person or group it so desires as being in affiliation with and loyal to the denomination. PCUS has done so in this dispute and clearly recognizes petitioners as its local adherents. Respondents just as clearly have withdrawn from PCUS and are no longer in communion with or loyal to that denomination. No one disputes these facts with

19. Although not stated in these terms, its holding constitutes a finding that the "substance" as opposed to the form of the connectional structure in the PCUS did not contain any neutral principles upon which a civil court could rely to sanction control by the denomination. Of course, the PCUS could create such principles as have other denominations. In the absence of such action by the denomination, however, the court is saying that it will not create a means by which the denomination can control local church property.

20. Petitioners ignore *Carnes*. This is not surprising, however, in that the Georgia courts held in that case that the general church had the right to control the direction and use of local church property and enjoined any interference with that use by persons who had withdrawn from the denomination.

regard to the status of the two local factions vis-a-vis PCUS.

These facts, however, were totally irrelevant to the determination of the issues before the courts below. Findings by a church tribunal that, under the law and ecclesiastical customs of a denomination, one of two local factions is the so-called "true congregation" typically do not stop at that point. They invariably go further as did the PCUS commission in this case and undertake to adjudicate property rights in the guise of making "ecclesiastical" decisions.<sup>21</sup> Certainly the First Amendment does not require civil courts to become rubber stamp enforcers of such contrived ecclesiastical decisions. Such an outcome would exalt form over substance and would empower religious denominations to create and alter property rights.

Petitioners vigorously contend that this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) [hereinafter *Serbian*], requires such an outcome. It does not. There were no competing factions of a local congregation present in the *Serbian* case. The only property involved was a monastery operated by the denomination.<sup>22</sup> The litigants on both sides claimed

21. The commission in this case not only recorded the irregularity of the withdrawing members and the pastor, and declared petitioners to be the true congregation, but it then undertook to forfeit "all rights to the property of the congregation" for those who had withdrawn. J.A. 235-36. Similarly, in *Sharpsburg* the "judgment" of the General Eldership recognized the loyal adherents as the true congregation and found that those who had withdrawn had "abandoned and forfeited all . . . properties . . . in the local church and in the Churches of God." 241 A.2d at 694.

22. The property consisted of thirty acres in Libertyville, Illinois. Two corporations were involved. The first was an Illinois religious corporation known as the Serbian Eastern Orthodox Diocese for the United States of America and Canada (the "diocesan corporation"). The second was an Illinois not-for-profit

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to be the true bishop and ruling authority of the diocese. One based his contention on having been regularly appointed bishop and an allegedly illegal attempt to remove him by the church authorities in Belgrade. The other claimed to have been regularly appointed to succeed his defrocked opponent. Therefore, this Court characterized the case as involving "not a church property dispute but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals." 426 U.S. 696, 709. It held that a civil court cannot undertake to determine whether the highest church tribunal has complied with its own rules and regulations concerning the removal of a bishop, but simply must accept whatever final decision has been rendered.

The clearly ecclesiastical decision designating the true bishop in *Serbian* passed control over the church property to that designee. However, this control over the property did not arise and the ability of the hierarchy to direct and change the individuals who exercised this control did not come about merely because the church employed the connectional or hierarchical form of church organization. It resulted instead because the corporations which held

Footnote continued—

corporation which was organized by the diocesan corporation and which was known as the Serbian Orthodox Monastery of Saint Sava (the "monastery corporation"). Legal title to the property was held by the monastery corporation. The constitution of the diocesan corporation provided that the "Diocesan bishop is the supreme head of the Saint Sava Monastery in Libertyville and that he appoints the abbot of the monastery and 'conducts the canonical supervision and the higher executive authority over the monastery.'" 219 N.E.2d 343, 347. The by-laws of the monastery corporation provided that the Diocesan bishop was the supreme head of the monastery and president of the board of directors. *Id.* at 343, 348.

There was absolutely no question as to the "substance" of the hierarchical polity as far as this property was concerned. The organic documents clearly placed it under the control of whoever happened to be the diocesan bishop.

title to the property originally were organized so as to effectuate such control.

The situation in this case is entirely different. When the schism arose, VPC was a local unit of PCUS. At the same time, however, it was a separate, local, legal entity with its own corporate existence which operated a church at 2193 Vineville Avenue in Macon, Georgia. It enjoyed the right to and did, acquire, hold and own property, and was recognized as being entitled to dispose of its property in its own name without reliance upon or necessity of action or acquiescence by PCUS. It was not, as petitioners would have the Court believe, a mere appendage of PCUS which relied upon the denomination for its very existence. The charter of VPC does not give a denominational representative supervision of the corporation or make him president of the board of trustees. The PCUS constitution does not make such a representative the supreme head of the local congregation. Quite to the contrary, it lodges control of local church property solely in the hands of the local congregation.

Apart from their so-called status as the "true congregation" of the denomination, petitioners have no legally cognizable claims upon the use of the VPC property. Without such a relationship, they are merely the minority faction of a voluntary association and thus have no entitlements. Therefore, their claims to the property depend entirely upon whether there is some incident or right of control vested in PCUS which can be conferred upon petitioners by recognizing them as the true congregation. In *Serbian*, the organization of the diocese and its corporations was such that whoever was bishop had control. There is absolutely nothing analogous to that situation here.

Moreover, there is nothing in *Serbian* or any other opinion of this Court which requires civil courts to create



means for a denomination to control local church property in the name of preserving a hierarchical church. If a church has taken the necessary steps to insure such denominational control as the Serbian church did, the Georgia courts will enforce such control in precisely the same fashion as they did in *Carnes*. Otherwise, they will not.

Likewise, there is nothing in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, to support petitioners' claims that the First Amendment requires deference to church court decisions determining who can control and use local church property. In *Watson* the question was which of two factions was entitled to possession and use of local church property following a schism not only in the local church, but in the presbytery, the synod and the general assembly. The issue was first litigated in a Kentucky state court prior to the final schism and turned upon the identification of the true officers of the congregation. The Kentucky court did not defer to the decision of the highest tribunal in the church but apparently followed the English view and undertook to make such a determination on its own.<sup>23</sup>

After the schism was complete, the losers in the state action filed a diversity case in federal court seeking a declaration that they were entitled to the use and control of the property. The court determined that the state liti-

23. This Court stated that:

"Under cover of inquiries into the jurisdiction of the synod and presbytery over the congregation, and of the General Assembly over all, it went into an elaborate examination of the principles of the Presbyterian church government, and ended by overruling the decision of the highest judicatory of that church in the United States, both on the jurisdiction and the merits; and, substituting its own judgment for that of the ecclesiastical court, decides that ruling elders, declared to be such by that tribunal, are not such, and must not be recognized by the congregation, though four-fifths of its members believe in the judgment of the assembly and desired to conform to its decree." 80 U.S. (13 Wall.) at 734.

gation was not a bar to the second proceeding and ruled for the plaintiffs on the merits. This Court affirmed.

This Court examined the general law on the subject of property held by churches and, relying on state court decisions, described three general common law property rules for resolving such disputes. The third of these rules governed disputes arising in a connectional denomination. In such a case, the existing religious congregation or its regular and legitimate successor is entitled to the use of the property. A civil court makes such a determination by ascertaining which group is recognized by the general church judicatory as the regular and legitimate successor and by deferring to that finding. This rule is said to be supported by the weight of judicial authority and to be founded in a broad and sound view of the relations between church and state in this country.<sup>24</sup>

The rule actually applied in *Watson* was not of constitutional dimensions.<sup>25</sup> It was a common law property rule, which as later noted in *Sharpsburg*, is one of at least three permissible methods of resolving church property disputes which do not impinge on First Amendment values. On the other hand, the rationale of the *Watson* court for rejecting the English solution was converted into

24. The *Watson* Court then noted that the English view which had prevailed in the state court litigation was different. The English view awards the use of the property to the faction which a civil court finds is adhering to the original tenets of faith and practice of the denomination rather than deferring to the denomination's own identification of the successor organization. While this sort of rule might be appropriate in England which has an established church, it simply is not compatible with the full and free right enjoyed in this country to embrace any religious belief which does not violate the laws of morality and property. 80 U.S. (13 Wall.) at 727-29.

25. "The opinion itself, however, did not turn on either the establishment or the prohibition of the free exercise of religion." *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 110 (1952).



a constitutional rule<sup>26</sup> in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), when the Court held that the free exercise clause of the First Amendment, as applied to the states through the Fourteenth Amendment, prohibits states from interfering with the selection of clergy by a church and from passing laws which displace one church administrator for another in disregard of the rulings of a church tribunal in the matter.

This Court also applied the rationale of the *Watson* court when it actually was faced with an application of the English view in *Hull*, 393 U.S. 440, by holding that the First Amendment does not permit church property disputes to turn upon the resolution by civil courts of controversies over religious doctrine and practice. It did not, as petitioners suggest, command that the First Amendment allows only the use of the property rule laid down in *Watson*, or that it allows a court to deviate from that rule only if there is no ruling by an ecclesiastical court.

In fact, the Court stated that "there are neutral principles of law, developed for use in all property disputes which can be applied without 'establishing' churches to which property is awarded." 393 U.S. 440, 449. Moreover, as petitioners concede, the Court took the occasion during the following term "to demonstrate and approve the appropriate application of 'neutral principles of law' to a church property dispute"<sup>27</sup> in the *Sharpsburg* litigation.

The material facts in *Sharpsburg* are simply indistinguishable from the facts in the case at bar. To the extent that any federal question is actually before the court in

26. See *Hull*, 393 U.S. 440, 449.

27. Petitioners' brief, at 20 (emphasis added).

this case, it is absolutely controlled by the disposition of the case in *Sharpsburg*.

That litigation involved two consolidated cases which sought to determine which of two factions should control the local churches, their property and corporations.<sup>28</sup> Title to the property was vested in trustees for the use of the respective local congregations.<sup>29</sup>

The corporate charters of the local congregations provided for the control and management of the property of the congregations by a board of trustees. The corporations were established under the Maryland General Religious Corporation Law which provided for the election of trustees who would become a body politic and corporate to manage the property of the church or religious society.

The constitution of the General Eldership contained no provisions dealing with the ownership and control of church property.<sup>30</sup> The constitution of the Maryland and Virginia Eldership required local church property to be

28. The plaintiffs were the Maryland and Virginia Eldership of the Church of God, a Maryland corporation, several members of the Sharpsburg congregation and its appointed pastor, and two members of the Indian Springs congregation. The defendants were the Church of God at Sharpsburg, Inc., its called pastor, the Indian Springs Church of God, a Maryland corporation, and its acting pastor.

29. Title to the Sharpsburg property would pass to the Maryland and Virginia Eldership if the congregation ceased to exist as a church organization. Title to the Indian Springs sanctuary was vested in trustees with a similar limitation over in favor of the Maryland and Virginia Eldership. Title to its parsonage was in the trustees without any successor estate.

30. The Eldership, however, had passed a resolution recommending that church properties be conveyed to trustees of the local church to be held in trust for the church. It also recommended that clauses be inserted providing for passage of the property to an annual eldership if the church should become extinct or cease to maintain an organization in harmony with the denomination.

conveyed to trustees of local churches with a limitation over in its favor if the church should become extinct.

In duly called and recorded congregational meetings, the majorities in both churches voted to withdraw from the Maryland and Virginia Eldership. The Eldership and the minority members of the congregation refused to accept this action and the Executive Committee of the General Eldership ruled that the withdrawing faction had forfeited all property rights in the local church property.<sup>31</sup> Litigation was then commenced to enforce this church judgment by preventing the withdrawals and gaining control of the local church property.

The Maryland Court of Appeals held that although civil courts have no power to interfere in spiritual affairs, when property rights are in issue courts must proceed to resolve the particular case in order to preserve definiteness and order in property held by religious corporations. 241 A.2d 691. Such an inquiry requires consideration of the polity of the denomination involved.<sup>32</sup>

31. The Maryland court noted that:

"On July 29, 1966, the executive committee of the Administrative Council of the General Eldership gave a 'judgment' that all persons who voted to withdraw from the Maryland and Virginia Eldership have:

"\* \* \* abandoned and forfeited all rights, privileges, properties and offices in the local church and in the Churches of God \* \* \*. In each local church the members who continue to adhere and submit to the doctrines and the policy of the denomination constitute the true congregation. The Executive Committee, as the duly constituted supreme court of the Churches of God, so determine, reaffirming that the presbyterial polity of the Churches of God recognizes no right of secession on the part of congregations affiliated with the denomination \* \* \*." 241 A.2d 691, 694.

32. Generally, there are three types: congregational, presbyterial, and episcopal, with the latter two being roughly considered hierarchical. Many hierarchical churches insert provisions in their constitutions, canon law or other controlling doc-

(Continued on following page)

The Church of God was found to have most of the characteristics of the presbyterial polity. It has annual elderships and a general eldership which governs local congregations. It is similar to The Methodist Church in that it appoints pastors, but it has a congregational polity in regard to local church property. For whatever reason, the denomination does not have any provision in its constitution to control local church property when a schism or withdrawal occurs. A denomination with a presbyterial or episcopal polity easily may make such provisions, but in the absence of such action, local control continues under the law of the state and the applicable property deeds.

The Maryland Court then rejected constitutional challenges to this result. The religious corporation law does not favor one side or the other and does not interfere with free exercise of religion. It merely allows churches to establish corporations to hold property. It does not tell them what kind of polity they must adopt or that they cannot establish control by the denomination in the constitution and bylaws. Neither does this law allow local churches to change the polity of a denomination from presbyterial to congregational. The question is what sort of internal structure has a denomination set up for its own use. Whatever it chooses will be recognized by the state.

As noted above, the Maryland Court of Appeals reviewed its decision upon remand from this Court following the *Hull* decision. In so doing, it exhaustively examined its earlier decision and held that it was strictly

Footnote continued—

uments which provide for denominational control of local church property. These may take different forms. However, a denomination need not adhere strictly to any one of the three forms, but may adopt characteristics of all three. 241 A.2d 691, 698-99.



in accord with the neutral principles approach mentioned in *Hull*. Upon a further appeal this Court dismissed for lack of a substantial federal question. The effect of such a disposition is to affirm the lower court and reject the constitutional challenge presented in the jurisdictional statement.<sup>33</sup> The *Sharpsburg* Court, however, went beyond mere dismissal, and in a brief *per curiam* opinion explained its reasoning:

"Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted. . . ." 396 U.S. 367, 368.

The facts in the instant case are indistinguishable. Petitioners are the minority faction of the local congregation who rely on a church court "judgment". Legal title to the property is in local trustees and a local church corporation. Neither the deeds nor the corporate charter gives PCUS any control over the VPC property. For whatever reason, the PCUS constitution does not provide for control of local church property when withdrawals occur or, for that matter, in any other instance. To the contrary, it provides for trustees or incorporation at the option of the local church and provides that the trustees or corporation shall take their instructions solely from the local congregation. The Georgia courts purposefully have adopted the Maryland approach, have decided the case based on these clearly neutral principles, and have conformed in all respects to the First Amendment.

33. See note 18, *supra*.

#### IV.

#### THE APPROACH URGED BY PETITIONERS WOULD OFFEND RATHER THAN PROMOTE FIRST AMENDMENT VALUES. THE GEORGIA APPROACH ON THE OTHER HAND IS COMPLETELY NEUTRAL.

Petitioners seek to persuade this Court to hold that the Constitution mandates a "100 percent deference rule" for the resolution of church property disputes. This is sought to be accomplished in two ways: first, by contending that all such disputes *invariably* involve issues which are "ecclesiastical" and which must be resolved by a church court in order to solve the case [Petitioners' Brief at 31-32]; and second, by arguing that "neutral principles of law" may be used to resolve such disputes *only* in the absence of any "authoritative church court decision" [Petitioners' Brief at 31].

Although this Court has never held that the approach urged by petitioners is mandated by the First Amendment, they nevertheless contend that the only way to uphold First Amendment principles would be to require such a rule. This contention is based on their assertions that the neutral principles approach is "standardless", that it allows civil courts to reject and overrule ecclesiastical decisions, and that it gives them the right to pick and choose between approaches in order to support the doctrinal position of the litigant it supports.<sup>34</sup> Quite to

34. Petitioners as much as accuse the lower courts in this case of finding for respondents in order to support the position taken by respondents in whatever underlying doctrinal controversy confronted the parties. This is an utter fabrication. All counsel who were involved in this litigation in the lower courts were very careful not to burden the courts with any doctrinal controversies that might have existed. The Georgia courts had no knowledge as to the respective positions of the litigants concerning any doctrinal questions.



the contrary, however, petitioners' approach would offend First Amendment values and would limit the freedom of denominations to set up whatever method of controlling local church property they desire.

These arguments ignore that this is purely and simply a dispute concerning the use and control of Georgia real estate. The record is completely devoid of any issue as to doctrine, faith, church polity or any other religious issue. In an effort to gloss over this short-coming, petitioners have sought to fabricate a religious controversy by contending that the identity of the "true congregation" of VPC is at stake. This is simply not so as we have pointed out above.

If adopted by this Court, the deference approach urged by petitioners would inevitably become the exclusive approach. Under petitioners' theory, civil courts would be able to use the neutral principles approach only in the absence of a denominational ruling on the subject. They contend that even the pronouncement of an ex parte administrative commission which had no jurisdiction over respondents after the congregation separated, must be abjectly followed. It is perfectly obvious that if such a rule were mandated by this Court, the denomination would always act to uphold the point of view of those local church members who were "loyal" to the denomination, regardless of all other circumstances, because to fail to do so might result in the loss of a local church by the denomination.<sup>35</sup>

35. Petitioners point to *Sharpsburg* as being a case in which there was not an indentifiable hierarchical church court decision to which to defer [Petitioners' Brief at 24]. However, the opinion in that case completely belies this contention. The Executive Committee of the General Eldership which described itself as the "supreme court of the Churches of God" had positively ruled in favor of the loyal minority and had undertaken to forfeit the property rights of the withdrawing faction. See note 31, *supra*.

Petitioners' approach would tend to inhibit the free exercise of religion by stifling dissent and discouraging schisms. See, in this connection, *Maryland and Virginia Eldership v. Church of God*, 241 A.2d 691, 701. All property held by a local congregation would, as a practical matter, be perpetually bound and tied to the established denomination. This is hardly an outcome which a constitutional rule should encourage.

Litigation of this kind has been going on for many, many years. PCUS has necessarily been aware for all of that period of time of the importance of the presence or absence in its Book of Church Order of provisions as to use and control of local church property. The failure to have any such provision prior to May 27, 1973 can only be interpreted as meaning that it was not wanted by the local churches of PCUS. It would be extremely inequitable and unjust if, under these circumstances, an administrative commission should be permitted to supply ex parte and after the fact what was missing on that date by conscious choice.

The reasoning of the Court of Appeals of Maryland in its first consideration of the *Sharpsburg* controversy, 241 A.2d 691, at 701, is very much in point:

"... a denomination with an episcopal or presbyterial polity ... may ... easily prevent the withdrawing congregation from taking with it the local church property if it takes the action we have suggested [provide in its constitution for the control of local church property]. In the absence of such action, the local corporation, which under the law of Maryland and the deeds to the local property controls that property, continues this control. There is no financial loss to the Elderships [the denomination] as it is stipulated

that neither of the Eldershops had 'contributed any funds to church property which have not been repaid to them.' "

That is exactly the situation here. It is not contended that PCUS has contributed any funds toward the acquisition or maintenance of the local church property. In view of the complete absence of any provision in the Book of Church Order authorizing it to prevent the congregation of VPC from controlling the local church property, PCUS has neither legal nor equitable standing to complain.

The Georgia approach makes no attempt to interfere with the hierarchical structure or the rules of any denomination. It wisely allows each denomination to determine whether higher levels in the general church shall be given the power to direct the use and control of local church property.

The approach recognizes that there are different types of connectional churches. The fact that a church can be characterized as falling within the group of denominations known as "connectional" has no inherent legal significance as a matter of First Amendment concerns. A denomination can structure itself so that it has features of two, or even all three, of the generally recognized forms. For example, a denomination can have bishops, which is typical of the hierarchical form, and yet simultaneously can have a system whereby local churches have complete control over their property. Neither the Constitution nor the Georgia approach speaks to this problem, and instead each religious body is completely free to set up its own form of government.

The result of the application of the Georgia approach is in no sense predetermined. Local church majorities have lost in United Methodist Church litigation, as illus-

trated by *Carnes* and by unreported Georgia trial court decisions.<sup>36</sup> The difference in result is explainable, of course, by the fact that The United Methodist Church decided many years ago to include in its Discipline very complete provisions dealing with the ownership and control of local church property, whereas PCUS has completely failed to do so.

The object of a civil court formula to resolve these types of disputes should be to "preserve definiteness and order in the holding of church property by religious corporations." *Sharpsburg*, 241 A.2d 691, 697. The Georgia approach does this.

The crux of petitioners' complaint is that the Georgia courts did not devise some way to ensure denominational control of the local church property despite the absence of appropriate provisions in the PCUS constitution. A connectional church can ensure control over local church property (i) by requiring trust clauses in deeds, (ii) by providing in its constitution that all property is held in trust for the benefit of the general church, (iii) by providing for the reversion of local church property in the event of an attempted withdrawal, and (iv) by securing the passage of state statutes to maintain such control. The PCUS did none of these. To the contrary, its constitution provides that the trustees of a local church shall hold, sell, mortgage and otherwise deal with local church property *solely* at the direction of the local congregation (not a Presbytery, a Commission, a Synod, the General Assembly, or anybody else). *PCUS thus had a policy of local control which can be ascertained from its constitution*

36. See, e.g., *United Methodist Church v. Sparrow*, No. 6,881 (Superior Ct., Washington Cnty., Ga. 1976); *United Methodist Church v. Doolittle*, No. 1,359 (Superior Ct., Dooley Cnty., Ga. 1974).

*under the neutral principles doctrine* without engaging in a searching, and impermissible inquiry into church polity.

### CONCLUSION

Respondents respectfully submit that the decisions below should be affirmed.

Respectfully submitted,

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IN THE

**Supreme Court of the United States**

OCTOBER TERM 1978

No. 78-91

R. W. JONES, SR., *et al.*,  
*Petitioners,*

v.

CHARLES T. WOLF, *et al.*,  
*Respondents.*

**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA**

**PETITIONERS' REPLY BRIEF**

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**ON WRIT OF CERTIORARI TO THE  
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**PETITIONERS' REPLY BRIEF**

The Brief for Respondents ("Resp. Brief") reveals just how far apart the parties are concerning the key questions of law in this case. Petitioners believe that their earlier Brief anticipated and responded to most of Respondents' arguments, and we wish to add only a few short points in reply:

1. **Determination of the Identity of the True Congregation of VPC Is Necessary in Order To Resolve This Dispute.**

It is important to note that Respondents acknowledge that PCUS had authority to determine



which of the competing factions constituted the true congregation of VPC. Resp. Brief at 5 n.9. Respondents assert, however, that "[t]he identity of the 'true congregation' has never been an issue in this case." *Id.*; accord, e.g., *id.* at 14-15.

The plain fact, however, is that—regardless of the legal rule they selected to resolve this controversy—the courts below were required to determine who constitutes the congregation of VPC in order to decide the property questions raised in this case. As we set forth in detail in our earlier Brief for the Petitioners ("Pet. Brief"), at 7, 16-17, the property at issue here is held in trust for the "use, benefit and behoof" of the congregation of VPC. Both Petitioners and Respondents claim to represent the true congregation of VPC.<sup>1</sup> Thus, whether the civil courts defer to the church court determination on this point, or whether they use some other legal rule to choose between the two groups, resolution of the conflicting

<sup>1</sup> This case is hardly unusual in presenting a conflict between two groups each claiming to be the rightful congregation of a local church. See, e.g., *State ex rel. Morrow v. Hill*, 51 Ohio St. 2d 74, 364 N.E.2d 1156, 1158 n.2 (1977); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865, 869-872 (Tex. Civ. App. 1977). Indeed, instances inevitably arise in church disputes where one faction contests the procedure used, or some other aspect of the decision purportedly putting the other faction in control of the congregation. Petitioners contend that in a hierarchical church the *Watson-Serbian* deference rule means that such issues should be resolved by the appropriate church court. It is unclear how civil courts could deal with such questions under the so-called "neutral principles/formal title approach" urged by Respondents—at least absent a full hearing in the civil courts on the merits of each such religious dispute.

property claims demands a decision as to which group is in fact the "true congregation" of VPC.<sup>2</sup>

Indeed, the "formal title" approach urged by Respondents leads only to the conclusion that title is in the local congregation—a proposition never disputed by anyone in this case. The further question of who properly represents the congregation was a fundamental element of the issue presented to and necessarily decided by the lower courts. It cannot be avoided under any approach to the case.

## 2. The *Watson-Serbian* Deference Rule Is Constitutionally Required.

Petitioners argued in their earlier Brief that First Amendment principles required the lower courts to defer to the hierarchical church court decision on the question of who constitutes the true congregation of VPC. See Pet. Brief at 11-17. Respondents argue, however, that the rule set forth in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), and its progeny, requiring deference to hierarchical church court decisions, has been "eliminated" in Georgia, Resp. Brief at 11, and is "not of constitutional dimensions." *Id.* at 19.<sup>3</sup> Respondents' position simply ignores the opinions of this Court to the contrary.

<sup>2</sup> Indeed, Respondents themselves note that the VPC trustees must "take their instructions solely from the local congregation." Resp. Brief at 24.

<sup>3</sup> Respondents seem to equate the state law implied trust principle with the constitutional deference rule first referred to in *Watson*. See Resp. Brief at 11 & n.15. This is a basic misconception. The deference rule arises out of the structure and rulings of the mother church and the local congregation's binding itself to abide by that structure and rulings. Whether or not state law principles call for an implied trust in favor of the mother church is simply irrelevant to application of the constitutionally mandated deference rule.

While *Watson* initially was decided without reference to the First Amendment, this Court subsequently held that the *Watson* rule is of constitutional dimension. *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 115-116 (1952). In *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710-711 (1976), this Court quoted approvingly the following language from *Watson*, and noted that it has "a clear constitutional ring":

It is of the essence of these [hierarchical] religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

The *Serbian* Court went on to state that "the *Watson* rule has been held to be mandated by the First Amendment." 426 U.S. at 712. Contrary to Respondents' contention that the *Watson* deference rule is not constitutionally required, this Court in *Serbian* summarized the First Amendment rule in terms precisely applicable to the instant case:

[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts

accept their decision as binding upon them. [426 U.S. at 724-725].<sup>4</sup>

### 3. PCUS Is a Hierarchical Church, and Thus the *Watson-Serbian* Rule Is Applicable Here.

Perhaps recognizing the weakness of their other arguments, Respondents seem to contend that no PCUS church rules call for church control over a matter such as that decided by the church court here. Respondents suggest that perhaps PCUS in fact is not hierarchical after all, at least with regard to this issue. See Resp. Brief at 27-28. The fundamental flaw in that argument is that the lower courts made no such finding,<sup>5</sup> nor could they under the circumstances here.

It should be noted at the outset that this Court has held on two separate occasions that PCUS is a hierarchical church. See *Watson*, *supra*, 80 U.S. at 722, 726-729; *Hull*, *supra*, 393 U.S. at 441-442. Numerous other courts have reviewed the PCUS *Book of Church Order* and come to the same conclusion. See, e.g., *Mills v. Baldwin*, 362 So.2d 2, 5, 7 (Fla. 1978); *Mills v. Baldwin*, Civ. Action No. 73-100 (Fla. Cir. Ct. 1975), reprinted at Pet. App. 20a, 23a ("The Presbyterian Church U.S. is not congregational in organization, but is clearly hierarchical or representative."); *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442, *cert.*

<sup>4</sup> *Watson* has also been cited with approval in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-447 (1968), and *Gonzales v. Archbishop*, 280 U.S. 1, 16 (1929). Only the dictum in *Watson* allowing civil courts to inquire into the "arbitrariness" of church decisions has ever been overruled, or even questioned.

<sup>5</sup> It is interesting to note that Respondents suggest what they believe the lower court findings were, "[a]lthough not stated in these terms." Resp. Brief at 14 n.19.



denied, 423 U.S. 913 (1975); *Presbytery of the Covenant, supra*, 552 S.W.2d at 868, 870.

Indeed, no other finding would be possible. The Brief for the Presbyterian Church in the United States as Amicus Curiae in Support of Petitioners ("PCUS Brief") sets out in some detail the provisions of *The Book of Church Order* and other governing church rules that clearly give PCUS church courts jurisdiction over a controversy concerning who constitutes the true congregation of a local church. *Id.* at 8-15. See also Pet. Brief at 6 n.3. Nothing in Respondents' Brief even suggests the inapplicability of these provisions.

*The Book of Church Order* emphasizes that a local congregation, or church session, is "not separate and independent" from the higher church courts, but rather is subject to their "review and control." JA 49-50. PCUS General Assembly rulings substantially pre-dating the instant controversy were explicit in holding that local congregations must use their property in accordance with the PCUS Constitution, and that in case of disputes the church courts retain the power to decide who is the true congregation entitled to continued control of church property. PCUS Brief at 11-12, 14:

The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. \* \* \* *In every instance nothing*

*in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church. (Emphasis added.)*

Disposition of the property of a particular church rests in the will of the congregation of that church. *The congregation is that body of persons recognized as members of that particular church by the respective courts of the church. (Assembly's Digest, p. 76) (Emphasis added.)*

\* \* \* \*

It takes more than a name to become a Presbyterian Church, U.S. It takes more than to profess the same faith as the Presbyterian Church, U.S. professes to become a Presbyterian Church, U.S. It takes a profession of that faith and *subjection to the government of that Church to make a Presbyterian Church, U.S.*

*A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. [preface to the Form of Government, III, 1, 5.] It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to*



*by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds.*

Moreover, numerous sections of *The Book of Church Order* require that local church members and officials must take oaths to submit to the supervision of PCUS church courts and to abide by PCUS governing rules. See *The Book of Church Order* §§ 4-1(2), 24-5, 27-6(4), 29-3, 210-5(c)(5), 219-1, 224-7, JA 33, 73, 83, 89, 145-146, 155, 159.

Thus, there simply can be no question that PCUS is a hierarchical church and that its members have agreed to abide by its constitution and church court rulings.<sup>6</sup> These rules, of course, do not prevent individuals like Respondents from withdrawing as members of PCUS or joining a new denomination; the rules simply prevent Respondents from ignoring decisions by the properly constituted church court as to the true congregation, and from taking the church property with them in the face of a ruling that they do not represent the true congregation.

The foregoing discussion indicates why Respondents are incorrect in their argument (Resp. Brief at

<sup>6</sup> This Court has noted that those who unite with a local church that is part of a hierarchical system do so with implied consent to the government of the hierarchical church and are bound to submit to that government. *Watson, supra*, 180 U.S. at 728-729, quoted with approval in *Hull, supra*, 393 U.S. at 446. Here, however, Petitioners need not rely upon an implied acquiescence in PCUS's form of government, including its church courts, because, as noted above, Respondents themselves took specific oaths to be bound by PCUS's form of government.

20-24) that the *Sharpsburg* case<sup>7</sup> is analogous to the present dispute. This Court dismissed the second appeal in *Sharpsburg* only after the state court had made a finding<sup>8</sup> that the structure of the Church of God is congregational, and not hierarchical, with regard to the matters at issue. See 249 Md. 650, 663, 241 A.2d 691, 699, 705.<sup>9</sup> That finding made the

<sup>7</sup> *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 241 A.2d 691 (1968), vacated and remanded, 393 U.S. 528, reaffirmed, 254 Md. 162, 254 A.2d 162 (1969), appeal dismissed, 396 U.S. 367 (1970).

<sup>8</sup> As Mr. Justice White noted in concurrence in *Serbian*, under the *Watson-Serbian* deference rule it is a threshold question for the civil court to determine whether the church government is indeed hierarchical. 426 U.S. at 725. If the church is not hierarchical with regard to the matter at issue—as in *Sharpsburg*—then the First Amendment does not command deference to any church court decision on that matter. Thus, the hypothetical question posed by the Amicus Curiae Brief of the Anglican Catholic Church, at 5, is completely answered by *Sharpsburg*: an otherwise hierarchical church, with an explicit charter provision giving local congregations exclusive power over certain matters, would not be deemed hierarchical with regard to such matters, and thus the *Watson-Serbian* deference rule would not apply.

It is also noteworthy that in *Sharpsburg* the mother church refused to recognize any right of secession and attempted to enforce that position in the civil courts by asking that those attempting to withdraw be enjoined from doing so. See 241 A.2d at 694. Such a ruling by a civil court would have been an obvious violation of the First Amendment since, as noted above, every member of a church or synagogue has an unfettered right at any time to disassociate himself or herself from any particular religious faith, doctrine or denomination.

<sup>9</sup> Indeed, the Maryland Court of Appeals found overwhelming evidence that the Church of God intended that its congregations be totally independent with regard to questions such as determining the identity of the congregation entitled to use of the property. See 249 Md. 650, 659, 241 A.2d 691, 697 (charter provision that the "congregation of this Church shall be and remain an independent congregation \* \* \* [and] such

(footnote continued)

*Watson-Serbian* deference rule inapplicable, since the rule applies only to hierarchical churches. In the instant case, no such finding was made, or could have been made, concerning PCUS, and thus the *Sharpsburg* decision is completely distinguishable. Instead, the reasoning and holdings of *Watson* and *Serbian* are completely applicable to this dispute and should have commanded the civil courts to defer to the church court ruling, rather than improperly reexamining the ecclesiastical question of which faction constitutes the "true congregation" of VPC.

(footnote continued)

associations [with a national church denomination] shall in no wise effect [sic] this Corporation in its ownership and control of its real and personal property, which shall be and remain in the properly constituted officers of this corporation."); *id.*, 249 Md. at 666, 241 A.2d at 700 (expert testimony that church government of Church of God "is not strictly speaking analogous to that of the Presbyterian denomination").

The differences between the Church of God government, reviewed in *Sharpsburg*, and the PCUS structure could hardly be more striking. As discussed at pp. 6-8, above, PCUS rules expressly state that local congregations are *not* independent, that they are subject to PCUS church court review and control, and that one of the PCUS church courts' powers is determination of the identity of the "true congregation" in case of a property dispute. This is also made clear by the various oaths which members and officials must take. See p. 8, *supra*.

## CONCLUSION

For the foregoing reasons, as well as those expressed in their earlier Brief, Petitioners respectfully urge this Court to reverse the decision below.

Respectfully submitted,

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JAN 19 1979

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1978

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NO. 78-91

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R. W. JONES, SR., et al.,  
*Petitioners,*

v.

CHARLES T. WOLF, et al.,  
*Respondents.*

---

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA

---

RESPONDENTS' MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BRIEF AND RESPONDENTS'  
SUPPLEMENTAL BRIEF

---

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**IN THE  
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**OCTOBER TERM, 1978**

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*Respondents.*

---

**RESPONDENTS' MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BRIEF**

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Pursuant to Rule 41(6) of the Rules of the Supreme Court of the United States, Respondents respectfully move the Court for leave to file a supplemental brief in the above-entitled case.

Respondents respectfully submit that consideration of this supplemental brief is necessary to apprise the Court of material cited extensively in Petitioners' Reply Brief which is outside of the Record and contrary to the Stipulation of Facts, and to clarify misimpres-

sions conveyed by the Reply Brief concerning the principal questions of law in this case.

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RESPONDENTS' SUPPLEMENTAL BRIEF

Petitioners' Reply Brief contains matters which are both outside of the Record and contrary to the Stipulation of Facts agreed upon by the parties, and creates misimpressions concerning the key questions of law in this case.

I.

**DETERMINATION OF THE IDENTITY OF  
THE CONGREGATION WHICH IS "TRUE" TO  
PCUS IS IRRELEVANT TO THE RESOLUTION  
OF THIS PROPERTY DISPUTE.**

Petitioners assert "that Respondents acknowledge that PCUS had authority to determine which of the competing factions constituted the true congregation of VPC." Petitioners' Reply Brief at 1-2. This assertion

is simply untrue. Respondents never have conceded that PCUS has the authority to determine the identity of the persons for whose benefit the property of the church corporation is held. Respondents argued in their Brief that PCUS was empowered only to determine which of the competing factions constituted *its* "true congregation" or faction. Respondents' Brief at 5, n. 9.

There is a critical distinction between (a) the entire congregation of VPC, and (b) the faction of the congregation which PCUS recognizes as being in communion and fellowship with PCUS. As noted previously, the determination of which of the competing factions is loyal or "true" to PCUS is irrelevant. Title to the property of VPC is in the *congregation* of VPC, and not in the minority that PCUS recognizes as the "true congregation." The *congregation* of VPC is that group of persons which on May 27, 1973 — the date of the resolution of separation — was entitled to vote on all matters concerning the local congregation, including the disposition of the real property of VPC. On that date, it is clear that the congregation by a majority vote could have empowered the trustees of VPC to convey fee simple title to the premises without acquiescence by PCUS and that PCUS would have no claim to the sale proceeds either by virtue of the Book of Church Order or any theory of implied trust. There is no distinction between this complete local congregational power over local church property and the right of a majority to withdraw themselves and their property from PCUS.

Accordingly, as Respondents repeatedly have emphasized, the "true congregation" recognized by PCUS, and the entire congregation of VPC which holds title

to the premises of the church, are not one and the same as Petitioners suggest. A determination of which of the two competing factions is loyal or "true" to PCUS is thus irrelevant unless PCUS can demonstrate that it had a pre-existing property interest in the premises of VPC. Using the precise approach sanctioned by this Court in *Sharpsburg*, the Georgia courts concluded that PCUS had no rights in the property of VPC. See Respondents' Brief at 6-9.

## II.

### ALTHOUGH PCUS GENERALLY IS A HIERARCHICAL CHURCH, IT NEVERTHELESS IS CONGREGATIONAL IN FORM WITH RESPECT TO LOCAL CHURCH PROPERTY.

Petitioners concede that:

An otherwise hierarchical church, with an explicit charter provision giving local congregations exclusive power over certain matters, would not be deemed hierarchical with regard to such matters, and thus, the *Watson-Serbian* deference rule would not apply. Petitioners' Reply Brief at 9, n. 8.

There is absolutely no difference in principle between this illustration, the facts in the instant case, and the facts before this Court in *Sharpsburg*. In all of these instances, the denomination has no power with respect to local church property, and the fact that the denomination otherwise is hierarchical is irrelevant.

In *Sharpsburg*, the Churches of God were primarily "presbyterial" (hierarchical) in organization. 241



A.2d 691, at 699-700. The Maryland courts found, however, that with respect to local church property, the Churches of God were congregational in form. Thus, the Maryland courts were not required to yield to the "judgment" of a church judicatory which purported to award title to local church property to one of several competing factions.

There is no distinction between the facts at issue in *Sharpsburg* and those in dispute in the instant case. In both cases, a church judicatory of a hierarchical church purported to exercise jurisdiction over local church property which was solely under the control of the local congregation. Although PCUS generally is hierarchical in structure, it nevertheless is clearly congregational with respect to local church property. Indeed, Sections 6-1 and 6-2 of the Book of Church Order vest sole and exclusive power with respect to local church property in the local congregation. As noted above, the local congregation is that entire group of persons which was entitled to vote on church business matters, not the minority which was thereafter recognized as the adherents of PCUS.

Contrary to the impression conveyed by Petitioners in their Reply Brief, the materials quoted at length on pages 6-8 of their Reply Brief are both outside of the Record and contrary to the Stipulation of Facts in this case and, therefore, should be disregarded by the Court. Even if these materials had been part of the Record below, the outcome would not be changed because these are merely proposals which were not approved as amendments to the Book of Church Order.

## CONCLUSION

Respondents respectfully urge this Court to disregard the submitted materials which are outside of the Record and to affirm the decisions below.

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WILLIAM P. THOMPSON, JR., CLERK

IN THE  
**SUPREME COURT OF THE UNITED STATES**

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October Term, 1978

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On Writ of Certiorari to the Supreme Court of Georgia.

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**Brief of *Amicus Curiae*, William P. Thompson, Stated Clerk  
of the General Assembly of The United Presbyterian  
Church in the United States of America, in which  
officers of 8 other denominations join.\*  
(See inside front cover)**

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Church in the United States of America, in which  
officers of other denominations join.\*  
(See inside front cover)**

## THE STATUS OF AMICUS CURIAE

William P. Thompson, the *amicus curiae* who files this brief, is the Stated Clerk of The United Presbyterian Church in the United States of America ("UPCUSA"); as Stated Clerk, he is the chief executive officer of the General Assembly of the UPCUSA.

The General Assembly of the UPCUSA is the supreme governing body of a Church which, as of December 31, 1977, consisted of 2,569,437 members and 13,904 ordained ministers organized in 8,675 particular churches through-

out the United States. Each particular church is governed by its elected representatives who constitute its governing board known as the Session. The particular churches in a geographical area are organized in and subject to the authority of a higher governing body called the Presbytery. The churches and presbyteries of a larger geographical area are organized in and subject to a superior governing body called the Synod. The churches, presbyteries and synods and the entire membership of the UPCUSA are under and subject to the authority of a supreme governing body known as the General Assembly.

*Amicus curiae* considers the issue presented by this case to be important to his Church and to all other churches in this country adhering to the principle of unity of government. Such churches adhering to the principle of unity of government, including the denomination directly involved in the instant case, are commonly referred to in the recent judicial opinions and legal literature as "hierarchical churches." *Amicus curiae* believes the decision of the Supreme Court of Georgia in the instant case offends the Constitution of the United States as interpreted by the decisions of this Court, and hence the decision of the Georgia court should be reversed.

### JOINDERS IN THIS BRIEF

*Amicus curiae* has written requests of the following officers of denominations that they join in this brief and their joinder is hereby indicated:

James R. Crumley, Jr., President of The Lutheran Church in America.

The Rt. Rev. Bishop Dezso Abraham, of The Hungarian Reformed Church in America.

Metropolitan Philip, Primate of the Antiochian Orthodox Christian Archdiocese of North America.

His Eminence Archbishop Iakovos, the Primate and President of the Greek Orthodox Archdiocese of North and South America.

Charles E. Edwards, Chairman of the Ecclesiastical Commission on Judiciary Affairs for the General Synod of the Associate Reformed Presbyterian Church.

T. V. Warnick, Stated Clerk of the General Assembly and Executive Secretary of the Executive Committee of the Cumberland Presbyterian Church.

Rev. Arie R. Brouwer, General Secretary of The Reformed Church in America.

Archpriest Daniel Hubiak, as Chancellor of The Orthodox Church in America.

### THE OPINION BELOW

The opinion of the Supreme Court of Georgia is printed in the Appendix to the Petition at page 11a, and is reported in 241 Ga. 208, 243 S.E. 2d 860.

### QUESTIONS PRESENTED

1. Do the First and Fourteenth Amendments, as interpreted by this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), require civil courts to defer to the decision of the church court of a hierarchical church on an issue of which of two competing factions is the true congregation and who are the members of a particular church congregation in that hierarchical church?

2. Do the First and Fourteenth Amendments require that the protection of the law be applied equally among hierarchical churches, whether such churches' hierarchical form is episcopal as in *Serbian, Keldroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), and *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960), or presbyterian as in *Watson v. Jones*, 80 U.S. [13 Wall.] 679 (1872), and the presbyterian form of the church in the instant case?

### CONSTITUTIONAL PROVISIONS INVOLVED

#### U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

#### U.S. Const., Amend. XIV, Sec. 1:

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### STATEMENT OF THE CASE

The issue before the Georgia courts was who constituted the members of the congregation of the particular presbyterian church in this case, the Vineland Presbyterian Church in Macon, Georgia. The facts appear not to be in dispute, as the evidence at trial consisted of a Stipulation of Facts and incorporated exhibits agreed to by the parties.

The Vineland Presbyterian Church was organized as a particular church in the Presbytery of Augusta-Macon of the Presbyterian Church in the United States (hereinafter "PCUS"), one of the denominations which are sometimes called "connectional" or "hierarchical" and which are governed by a form of government contained in the "Book of Church Order."

On May 27, 1972, the congregation of the Vineland Presbyterian Church met and voted on a resolution proposed by the defendants purporting to withdraw the church from the PCUS. 165 persons voted for the resolution and 94 voted against it. The defendants (proponents of the resolution) later purported to strike the plaintiffs (the opponents of the resolution) from the membership rolls of the church. Shortly after the 1972 vote, the defendants proceeded, without the consent of the Presbytery of Augusta-Macon of the PCUS, to join a different organization which has no connection with the PCUS.

The Presbytery of Augusta-Macon of the PCUS appointed an Administrative Commission pursuant to Chapter 19, secs. 2-3 of the Form of Government of the PCUS. After proceedings taken by the Administrative Commission pursuant to the Book of Church Order, that commission determined that those members of the Vineland Church who had not renounced their affiliation of membership in the PCUS constituted the true congregation of the church. This group of loyal members include petitioners and the class they represent. These loyal members have been deprived both of their membership in the church and of their use of the property of the Vineland Presbyterian Church by the respondents and the class they represent.



## ARGUMENT

### I. The Decision of the Georgia Court Is Contrary to the Requirement of the First Amendment.

The Georgia Court refused to recognize the authority of the Presbyterian Church in the United States, as exercised under its Form of Government, in respect of the membership of the Vineland Presbyterian Church. That authority was exercised by the Presbytery of Augusta-Macon, a judiciary of the PCUS through its administrative commission appointed in accordance with the Book of Church Order. The PCUS thus determined who are the members of the Vineland Presbyterian Church, and hence who are the congregation of that church privileged to use the church property in the furtherance of the purposes of the PCUS.

It is not disputed that the Vineland Presbyterian Church was organized by the Presbytery of Augusta-Macon of the PCUS, and that the Vineland church was and continued to be an integral part of the PCUS up to the time of the 1972 vote. It is similarly undisputed that the Vineland church and all of its members had been subject to the Constitution and Form of Government of the PCUS from the date of the organization of the Vineland church in 1917 up to the time of the 1972 vote. Part of that Form of Government of the PCUS is the authority of the Presbytery, especially with respect to the particular churches within its jurisdiction. See Stipulation of Facts (Exhibit "U" in the record) and Book of Church Order, Chapter 16, The Presbytery in the Form of Government (Exhibit "A" in the record).

Another important aspect of the Government of PCUS as established in the Book of Church Order is set forth in Chapter 19, dealing with Committees and Commissions of Church Courts. "Church Courts" of the PCUS include the Presbytery. See Form of Government, Chapter 13, section 1. The power and jurisdiction of Church Courts is provided

in Chapter 14. In the exercise of the jurisdiction of the Presbytery, the Presbytery of Augusta-Macon—the Church Court having jurisdiction in this case—acted under the authority of Chapter 19, section 2 and 3 through its Commission, and determined that the plaintiffs and the class they represent constitute the true congregation of, and hence the members of, the Vineland church. See Stipulation of Facts, Exhibit "U" in the Record.

Accordingly, there was in this case an adjudication by the duly constituted Church Court of the issue of who are the members, and hence the true congregation of the Vineland Church, pursuant to the constitutional authority of PCUS as provided in its Form of Government, Exhibit "A". This adjudication is an ecclesiastical decision valid and required to be recognized, where material, by the civil courts. As stated in *Serbian* at page 724.

"In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them."

The Court said in *Serbian* at page 698, "The basic dispute is over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada (American-Canadian Diocese), its property and assets." So here, the basic dispute is over the control of the Vineland Presbyterian Church, its property and assets. As in *Serbian*, where the property rights and control followed the adjudication of the "Holy Assembly of Bishops" of the Serbian Orthodox Church with respect to the person—the Bishop—in office who should exercise authority of that office and,

hence, authority over property subject to that office, so here the Presbytery of the PCUS determined the true congregation of the Vineland Presbyterian Church and, hence, the authority over the property enjoyed by and used by that church in the furtherance of the purposes of the church and the PCUS.

## II. The Plaintiffs Are Entitled to Equal Protection of the Law.

Although the hierarchical form of the Churches involved in *Serbian*, *Kedroff* and *Kreshik* is episcopal, whereas the hierarchical form of the PCUS, the Church in the instant case, is presbyterian, the principle of constitutional law applicable to both species of churches is the same. The element of organization which causes hierarchical churches to differ from congregational churches, in the context of this discussion, is that hierarchical churches are founded on the principle of unity of government: *i.e.*, that the Church consists of a single organization, although composed of many parts, and that the parts are united and comprise the whole, which is subject to a hierarchical series of judicatory bodies.

The presbyterian hierarchical form—the form of the PCUS—is easily understood, as it has some similarity with our civil government, both being representative forms of government.

Although the decisions of the Church tribunals in the *Serbian*, *Kedroff* and *Kreshik* cases concerned the persons elected or appointed to hold a particular office, whereas the decision of the Church tribunal in the instant case concerned the persons who were members of the Vineland Presbyterian Church, the difference is not a difference in principle but merely reflects differences in detail between two different species of hierarchical churches.

While *Watson* did not speak expressly in constitutional terms, it recognized the right of religious organizations to

be accorded equality or equal protection under the law. This court said in *Watson*, 80 U.S. (13 Wall.) at page 714, "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights in property or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints."

It could hardly be suggested that a Church is not to receive the equal protection of the law accorded to secular voluntary associations, merely because it is a Church. The freedom guaranteed by the First Amendment would seem to eliminate any such thought. Of equivalent importance, and controlling in the instant case, is that there should be no difference in the application of First and Fourteenth Amendment principles to the various Churches which have adopted the hierarchical form of government.

Applied to the instant case, the ecclesiastical authority which elected or appointed the Bishops with control of property in *Serbian*, *Kedroff* and *Kreshik* is no more valid than the ecclesiastical authority of the Presbytery which by its Administrative Commission determined the true members of the Vineland Presbyterian Church with control of its property.

## III. Title to Property Is Not at Issue.

The court below misconceived the issue in the first sentence of its opinion (Supreme Court of Georgia, see appendix page 11a of the Petition for Writ of Certiorari, and the report of the opinion in 243 S.E. 2d 860 at page 861), which states the issue as one involving a property title dispute. The court below failed to realize that the legal title to property would remain in the same title holding corporation regardless of the outcome of the case. The actual issue is "who are the members of the congregation of the Vineland Presbyterian Church".

The *Restatement of the Law of Trusts* 2d, par. 2, comment (d) correctly notes that "Title' unlike 'ownership' is a colorless word; to say without more that a person has title to certain property does not indicate whether he holds such property for his own benefit or as trustee." It is the beneficial interest, the interests of the true congregation and the religious uses—those consistent with the religious doctrines of the PCUS—that were at issue in the church judicatory and in the civil courts, and not where the legal title lies.

Nor is property for property's sake the issue. Property has importance, indeed its only significance to a Church, solely as an aid to church purposes. The freedom guaranteed by the First Amendment is not a sufficient protection of the right to pursue those purposes without the consistent application in all similar controversies involving hierarchical churches of the principles of *Watson*, *Kedroff*, *Kreshik* and *Serbian*, whether the form of government of such a church is episcopal or presbyterian.

## CONCLUSION

Wherefore, it is respectfully requested that this Court reverse the judgment of the Supreme Court of Georgia and direct the Supreme Court of Georgia to enter judgment in favor of the petitioners.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

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*Respondents.*

BRIEF FOR  
THE PRESBYTERIAN CHURCH IN THE UNITED STATES  
AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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AS AMICUS CURIAE IN SUPPORT OF PETITIONERS**

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**INTEREST OF THE PRESBYTERIAN CHURCH IN  
THE UNITED STATES**

The Presbyterian Church in the United States (hereafter PCUS) is the general church or denomination of which the Vineville Presbyterian Church of Macon, Georgia, was an integral part at the time of the congregational schism into two factions, each claiming to be the "true congregation" of the Vineville Presbyterian Church and entitled to the exclusive use and control of the church property. The Court below refused to recognize the authority of the PCUS church courts in determining which faction constituted the "true congregation." Instead, the Georgia Court imposed its own form of church government (majority vote of local congregation) and permitted the dissident faction to secede from the general

church, taking with it the church property.

It is submitted that the decision below violates the requirements of the First Amendment of the Constitution of the United States insofar as it abrogates the decision of an hierarchical church court properly exercising ecclesiastical jurisdiction. By taking the beneficial use and control of the church property from those who remain in PCUS and continue to be recognized as the PCUS congregation by the courts of the general church, the decision below also violates the due process clause of the Fourteenth Amendment.

The principle announced by this Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872) and most recently confirmed in *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976) requiring civil courts to defer to ecclesiastical authority as the basis of determining intrachurch disputes affecting property rights in hierarchical churches would appear to be controlling in the instant case. However, the refusal of the Georgia Court to recognize and apply this principle is evidence of the confusion and conflict which continues to exist in the area of such property disputes.

It is of extreme importance to PCUS and to other religious denominations having hierarchical forms of church government that this Court settle once and for all the proper basis for interpreting constitutional rules applicable to property disputes in these denominations. Unless this is done, litigation resulting in contradictory rulings concerning the authority, powers and jurisdiction of the hierarchical churches will continue to plague these churches to the particular detriment of their local congregations and individual members.

This Amicus brief is being filed with the consent of all parties (letters on file with the Clerk of the Court).

#### ARGUMENT

Prior to 1970, the rule of action uniformly followed by civil courts in this country in property disputes within hierarchical churches was that if no express trust were controlling,

the civil courts were to defer to the decision of the highest applicable ecclesiastical authority. In the case of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872) which involved a property dispute within a hierarchical church (Presbyterian) this Court described the rule as follows:

It is the case of property acquired in any of the usual modes for general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the question of discipline, or of faith, or of ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. (pages 726 and 727)

The principles applied in *Watson v. Jones* were reaffirmed by this Court in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952) and again in *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), and were rather uniformly followed by the various state tribunals. In the case of *St. John's Presbytery v. Central Presbyterian Church*, 102 So.2d 714 (Fla. 1958) the Florida Supreme Court observed:

This is an abounding array of authorities but they all treat some phase of litigation growing out of church schisms in which both factions lay claim to the church property. When the church is representative, republican or episcopal in government, the au-

thorities uniformly hold the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or a minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated ecclesiastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran, I have found no exception to this rule. *They could not function under any other rule.* (Emphasis supplied)

Thus the rule of deference to ecclesiastical authority in matters affecting property disputes in hierarchical churches appeared to be well settled. However, in 1969, in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), a case also involving a PCUS church property dispute in the State of Georgia, this Court by dictum made reference to "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded."<sup>1</sup>

This reference in the *Hull* opinion to "neutral principles of law" as further expounded by Mr. Justice Brennan in his

<sup>1</sup>The issue in the *Hull* case was the "departure from doctrine" theory which had been applied by the Georgia Court and which this Court struck down as being in violation of the First Amendment. In the *Hull* case, this Court was not concerned with deference to ecclesiastical authority and there is nothing in the Court's decision which in any way controverts or changes principles and rules of actions described in *Watson v. Jones* as affirmed in the *Kedroff* and *Kreshik* decisions.

concurring opinion in *Maryland and Virginia Eldership v. Church of God*, 396 U.S. 367 (1970) and coupled with the Court's denial of a second petition for a writ of certiorari in *Hull* (reported 369 U.S. 1041 (1970)) was soon seized upon by dissenting church factions as justification of their claims for independence and autonomy. Under the rubric of "neutral principles of law" and "formal title" doctrines, these dissident groups are claiming the right by majority vote in the local congregation to secede from the general denomination taking with them the church properties and completely ignoring all church authority and decisions of ecclesiastical courts.

The status of the law with respect to church property disputes in hierarchical churches which was so well developed and settled prior to the *Hull* and *Eldership* cases is now in a state of confusion and there is conflict in the lower courts as to the proper application of the constitutional requirements.

The damages being suffered by hierarchical churches as a result of the present unsettled state of the law is severe. PCUS is an example. PCUS is a church with approximately 870,000 members, with 4,010 local congregations in seventeen states and the District of Columbia.<sup>2</sup> Since 1970, there have been no less than 295 instances of withdrawals or attempted withdrawals by dissident local factions claiming by majority vote to be the "true congregation" of the particular local church and under this "neutral principle of law" entitled to the exclusive possession and control of the church property. Fourteen of these instances, including the case now before this Court, involve PCUS congregations in the State of Georgia.

Of the 295 instances of withdrawal or attempted with-

<sup>2</sup>Statistical data on PCUS members and congregations cited herein is taken from Minutes of the 118th General Assembly Presbyterian Church in the United States, June 9-16, 1978.



drawal from the denomination, 130 involved churches which were, or are, the only PCUS church in the community. In these cases the damage to the denominational church and to the local congregational members who wish to remain loyal is particularly severe. The loyal members are deprived of the church property and must make provisions for a new place of worship. Quite often the expense is too great and the loyal congregation is forced to dissolve, leaving the denominational church with no effective church witness in the community.

Many PCUS congregations are relatively small in terms of membership. According to PCUS records for the year 1976 approximately 47 percent of its congregations had less than one hundred members and 12 percent had less than twenty-five members. The statistical records for the year 1977 show that 1,722 congregations, or about 43 percent, have one hundred or less members and 383, or about 9.5 percent, have twenty-five or less members.<sup>3</sup> Eighty of the congregations with one hundred or less members are in Georgia. In jurisdictions where the civil tribunals elect not to follow the traditional rule of deference to ecclesiastical authority but instead a "neutral principle" rule of majority vote, the probabilities of abuse are much greater in the smaller congregations. In the congregations of one hundred or less it is not too difficult for a very few people to gain control of a majority of the membership. It is even possible for a small group to join the church for the very purpose of taking the church out of the denomination or for the purpose of taking the church property for personal and private gain.

The issues which divide church groups are varied and certainly as numerous as the number of existing denominations and religious sects. Some issues are antiquated, extending back over the centuries and their origination can only be traced in church history records. Other issues are merely

<sup>3</sup>The decrease in percentage is a result primarily of smaller churches being taken out of the denomination rather than an increase in the size of membership.

reflections of changing mores and attitudes in our modern society. In recent years, for example, many of the issues dividing local congregations and national churches have been colored with strong economic, political, racial and civil rights overtones. Typical is the list of grievances against PCUS cited by the dissident faction in the *Hull* case. As reported by the Supreme Court of Georgia at 159 S.E.2d 690, page 692, the dissidents objected, among other things, to the ordaining of women as ministers and ruling elders, and pronouncements about civil, economic and social matters which the dissidents considered too liberal.

When such actions, pronouncements or policies cause dissent and result in a division of the church members, the basis for adjudicating and determining such intrachurch disputes depends entirely on the form of a particular church's government and such issues are totally beyond the realm of any civil tribunal to determine. In this vein, this Court more than once has instructed that:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. . . . All who unite themselves to such a body [the general church] do so with an implied consent to [its] government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them [sic] reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of

questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. (*Watson v. Jones*, 80 U.S. (13 Wall) 679 at 728, quoted in *Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church*, 393 U.S. 440 at 446, and in *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 at 711.)

PCUS is a church with a connectional or hierarchical form of government and, in the words of the *Watson* Court quoted above, PCUS has created "tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association."

The constitution of the PCUS consists of its doctrinal symbols, embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with *The Book of Church Order*, which comprises the Form of Government, the Rules of Discipline, and the Directory for Worship.

*The Book of Church Order*<sup>4</sup> §13-1 defines the form of government,

... by representative assemblies, composed exclusively of Presbyters or Elders. These assemblies, called Church courts, in the order of their regular gradation, are: Church Sessions, Presbyteries, Synods, and the General Assembly. . . .

The jurisdiction of the church courts is described in §14-5:

<sup>4</sup>All citations to *The Book of Church Order* refer to the Fourteenth printing 1972 edition.

... The Church Session exercises jurisdiction over a single church; the Presbytery over what is common to the Ministers, Sessions, and churches within a prescribed district; the Synod over what belongs in common to three or more Presbyteries, and their Ministers, Sessions and churches; and the General Assembly over such matters as concern the whole Church. . . . Although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation. Disputed matters of doctrine and order, arising in lower courts, may be brought to higher courts for decision.

These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate church court.

The powers of the Presbytery, including those respecting individual churches, are enumerated in §16-7:

...

(3) To review the records of Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church.

(4) To see that the lawful injunctions of the higher courts are obeyed.

...

(6) To unite or divide churches, at the request of the members thereof.

- (7) To organize new churches.
- (8) To receive and dismiss churches.
- (9) To dissolve churches.
- (10) To control the location of new churches and of churches desiring to move to new locations.

...

§6-2 deals with the property of an incorporated church.

If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the

church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation.

From the foregoing provisions, it can be seen that whenever a division or schism occurs in a PCUS church, jurisdiction to determine the issues which have caused the dispute rests primarily with the Presbytery. Whenever factions within a congregation contend that each is the "true church," the decision is to be made by the Presbytery subject to appeal to the higher courts. §6-2 provides that when a church is incorporated, the corporation and its officers shall acquire, hold and dispose of the property for "*the church*." Thus, when the question arises as to who is *the church* for purposes respecting church property, it is still the prerogative of the Presbytery to decide.

The General Assembly of the PCUS by declaratory statements interpreting the church's constitutional provisions has left no doubt as to the position of the denomination with respect to ownership, use and control of church property. The following are pertinent excerpts from the statement adopted by the 1971 General Assembly:

The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. *In every instance nothing in the manner of*



*tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church.* (Emphasis added.)

Disposition of the property of a particular church rests in the will of the congregation of that church. *The congregation is that body of persons recognized as members of that particular church by the respective courts of the church.* (Assembly's Digest, p. 76) (Emphasis added.)

In 1967 the Presbytery of Potomac overtured the General Assembly to make clear the Presbyterian Church, U.S. position regarding the ownership of church property. The General Assembly reaffirmed its 1953 statement and responded: "The Book of Church Order, when supplemented by the declaratory statement of the General Assembly of 1953, is sufficiently clear. (Minutes, 1967, p. 127).

The Book of Church Order provides that Presbytery has the authority to receive and dismiss churches. Appellate procedure is outlined in Chapter 14 of the Form of Government and Part V of the Rules of Discipline.

It should be pointed out that Section 4-(2) provides that upon organization, the members of the congregation of a Presbyterian church shall enter into a covenant and with uplifted hand ". . . solemnly promise and covenant that they will walk together as an organized church, on the principles of faith and order of the Presbyterian Church in the United States, . . . ." (Emphasis added.)

All persons who subsequently enroll themselves as communing members on profession of faith of the particular church must first agree to submit themselves to the government and discipline of the Church.

(Section 210-5(5). Directory for the Worship and Work of the Church.)

Ministers and other officers before ordination approve the government and discipline of the Presbyterian Church in the United States, and promise subjection to their brethren in the Lord. (Form of Government, Sections 29-3, 27-6.)

When any Minister, other officer or communing member feels that he can no longer in good conscience remain a part of the Presbyterian Church in the United States, the Book of Church Order provides an honorable and orderly procedure for separating himself from it. (Rules of Discipline, Chapter 11.)

Section 14-5 of the Book of Church Order sets forth the sphere of action of each Church court and their interrelations to each other: "These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate Church court."

Section 16-7 of the Book of Church Order provides that Presbytery has the power to receive, dismiss, ordain, install, remove and judge ministers, to review the records of the Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church. The Presbytery further has the power to establish the pastoral relation and to dissolve it at the request of one or both of the parties or where the interest of religion imperatively demands it and, further, the Presbytery has the power and authority to see that the lawful injunctions of the higher courts are obeyed, to condemn erroneous opinions which injure the purity or peace of the church, to visit churches for the purpose of inquiring into and redressing evils that may have arisen in them, to unite

or divide churches at the request of the members, to form and receive new churches, to dissolve churches and in general to order whatever pertains to the spiritual welfare of the churches under its care. Further, the Presbytery has the power and authority to appoint commissioners to the General Assembly of the Church and to propose to the Synod or to the General Assembly such measures as may be of common advantage to the whole Church.

It takes more than a name to become a Presbyterian Church, U.S. It takes more than to profess the same faith as the Presbyterian Church, U.S. professes to become a Presbyterian Church, U.S. It takes a profession of that faith and *subjection to the government of that Church to make a Presbyterian Church, U.S.*

*A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. (preface to the Form of Government, III, 1, 5.) It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds. To the Presbytery are superadded the higher judicatories of Synods and General Assemblies, as the means of preserving the standards of doctrine and discipline on a more extended territorial scale.*

Such has been the organization of the Presbyterian Church in Scotland, from the time of John Knox to this date, and has been substantially followed by the Presbyterian Church in England and the United States.

The foregoing represents the Presbyterian Church, U.S. position on church property. This position is subject, however, to the civil laws of the State where the property is situated. Generally, however, the civil courts concluded that a congregation belonging to a religious denomination and subject to the constitution, faith and doctrines thereof, cannot use its property for a purpose which violates the relationship of the congregation to the denomination. (minutes of 111th General Assembly, Presbyterian Church in the United States, p. 171-172.)

In the instant case, the Georgia Court found that title to the Vineville Presbyterian Church was acquired by various conveyances all being to named trustees of the Vineville Presbyterian Church or simply to the Vineville Presbyterian Church and that the Vineville Presbyterian Church was incorporated in 1915. The Court also found that at the time of the schism within the local congregation the Vineville Presbyterian Church was a member unit of the Augusta-Macon Presbytery of PCUS. The Court also found that the Augusta-Macon Presbytery had declared the petitioners and their group the true congregation of the Vineville Presbyterian Church and had withdrawn from the respondents and their group all authority derived from PCUS including all their ecclesiastical privileges and rights of property of the congregation. These findings were never controverted.

Notwithstanding the foregoing, the Court then concluded as a matter of law that legal title to all the church property of the Vineville Presbyterian Church is vested in the local church represented by the respondents (the majority faction).

On appeal the Georgia Supreme Court affirmed the decision of the trial court, again refusing to attach any significance to the determination made by the Augusta-Macon Presbytery. The reason as stated in the Court's opinion was:



Since *Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, 393 US 440 (89 SC 601, 21 LE2d 658) (1969), civil courts have been forbidden, under First Amendment principles as applied to the states by the Fourteenth Amendment, from resolving church property disputes on questions of an ecclesiastical nature. . . . The decision of the Supreme Court of the United States stated there are neutral principles of law, developed for use in all property disputes, which can be applied in resolving church property disputes without resolving underlying controversies over religious doctrine. (See Appendix to Petition for Writ of Certiorari, pages 12a and 13a.)

We submit that the decisions below constitute an illogical and incorrect application of the law. The fact that title to the subject property was vested in the Vineville Presbyterian Church is not the issue in this case. The issue is one of identification, i.e. which of the two contending factions constitutes the congregation of the Vineville Presbyterian Church. The identification was made by the proper church court in accordance with the form of government under which the Vineville Presbyterian Church was originally organized and at all times continued to exist and function as an integral part until the unfortunate occurrence of the congregational schism.

Recognition of the church court decision by the Courts below would have been a proper application of the teachings of the *Watson*, *Hull* and *Milivojeovich* decisions and would not have required any investigation into or determination of ecclesiastical questions by the civil tribunals. *Accord*, *Adickes v. Adkins*, 264 S. C. 394, 215 S.E.2d 442, cert. denied, 423 U.S. 913 (1975) and *Presbytery of the Covenant v. First Presbyterian Church of Paris*, 552 S.W.2d 865 (Tex. Cir. App. 1977), *Mills v. Baldwin*, 362 So.2d 2 (Fla. 1978).

Instead the Georgia Courts have imposed their own form of government and procedure for determination of the ecclesiastical question of who constitutes the church. The form which these courts have established is government based on majority vote of persons claiming to be members of the local church. This is not the Presbyterian form of government and what the Courts below have done amounts to a violation of the First and Fourteenth Amendments. Mr. Justice Frankfurter said it very well in his concurring opinion in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 122: "[I]t is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads."

Nothing in support of the decision below is added by the Georgia Court's determination that "[t]he corporation charter [of the Vineville Presbyterian Church] of April 29, 1915, and subsequent revivals, fail to show any interest in the corporation other than that of the congregation." This conclusion standing alone is irrelevant to the issue presented. The real issue is the *identification* of the congregation. As one legal scholar has observed:

. . . The church is the religious society or unincorporated association; and the corporation is the agency of the society having as its only purpose serving the interests of the church in holding property and facilitating the property and financial affairs of the church. In legal concept, the relationship of the church to its corporation is as master to servant, principal to agent, or beneficiary to trustee.

It seems fair to say that to look to "formal title" without more to determine all interests in property thus held, is to disregard substance and reality. As the words used to describe the theory denote, it is to resort to form rather than substance. . . . (McKeag, *The Problem of Resolving Property Disputes in Hierarchical Churches*, 48 Pa. Bar Ass'n Q. 281, 288 (1977).)



In the case of *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442, *cert. denied*, 423 U.S. 913 (1975), the appellants (dissenting majority faction) contended that the decision of the trial court in favor of the loyal minority "should be reversed because 'neutral principles of law' require that the property in question should be in the possession and control of the appellants representing a majority of the members of the First Presbyterian Church of Rock Hill, an eleemosynary corporation." In support of this contention the appellants cited *Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church*, *supra*. In disposing of this contention the South Carolina Supreme Court correctly said:

... A review of that case convinces us that it is of no comfort to the appellants here and certainly it does not require a result contrary to *Bramlett*.<sup>5</sup> By a determination of this case, this Court exercises no role in determining ecclesiastical questions. We merely settle a dispute on the question of identity, which in turn necessarily settles a dispute involving the control of property. . . .

In response to further contentions that the order of the trial court violated rights of the dissident majority faction guaranteed by the Establishment and Due Process Clauses of the State and Federal Constitutions, the South Carolina Supreme Court in the *Adickes* case said:

... The appellants voluntarily associated themselves with the First Presbyterian Church of Rock Hill and became subject to the discipline and government of the Presbyterian Church in the United States. They voluntarily severed their connection, and when they did they forfeited any right to the use and possession of the property of that church under the long established law of the church and of South Carolina. Due

<sup>5</sup>*Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956)

process has not been denied the appellants. By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take with them upon seceding. The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church, and it belongs to the same after they have withdrawn. They simply are not now a part of that church. . . .

The petitioners in the case now before the Court argue that the so-called doctrine of "neutral principles" is applicable *only if* no church adjudicatory procedures are available or have been followed and that civil courts should never turn to "neutral principles" if the issue has already been determined (as in the instant case) by an ecclesiastical court exercising proper jurisdiction. We entirely adopt and agree with this position. Further, we submit that deference to decisions of the highest ecclesiastical tribunal within a church of hierarchical polity is in essence the application of "neutral principles" of law. And we strongly contend that this Court's decisions beginning with *Watson v. Jones*, *supra*, and culminating in *Serbian Eastern Orthodox Diocese v. Milivojevich*, *supra*, require that civil courts give binding deference to determinations by church courts within hierarchical churches.

We have attempted in this brief to demonstrate something of the extent and nature of the serious legal problems inflicted upon PCUS as a national church and upon its local churches and individual members as a result of the present confusion and conflict among the lower courts. As the petitioners quite correctly have pointed out, these problems are not peculiar to PCUS but also involve the other hierarchical churches and their millions of members. It is of utmost importance to these churches that this Court act immediately to resolve this confusion and conflict, clarifying the constitutional requirements which the civil courts must follow in the adjudication of property disputes within hierarchical churches.

**CONCLUSION**

For the reasons set forth above, we respectfully request the Court to reverse the decision below.

Respectfully submitted,  
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Supreme Court, U. S.

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1978

**No. 78-91**

**R. W. JONES, SR., et al.,**

**Petitioners,**

**vs.**

**CHARLES T. WOLF, et al.,**

**Respondents.**

**BRIEF AMICUS CURIAE OF THE GENERAL COUNCIL  
ON FINANCE AND ADMINISTRATION OF THE  
UNITED METHODIST CHURCH**

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**BRIEF AMICUS CURIAE OF THE GENERAL COUNCIL  
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UNITED METHODIST CHURCH**

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**I.**

**INTEREST OF AMICUS AND INTRODUCTION**

The General Council on Finance and Administration of The United Methodist Church ("GCFA"), an Illinois corporation not for profit, has among its concerns the safeguarding and protection of certain legal interests of The United Methodist Church ("UMC"), an international Protestant religious denomination and movement with approximately 10 million members and 43,000 local churches.<sup>1</sup>

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<sup>1</sup> GCFA's discretion with regard to legal matters derives from Par. 907(4) of *The Book of Discipline* of The United Methodist Church. *The Book of Discipline* contains the constitution and basic legislation of United Methodism and constitutes the pronouncement of the highest authority or judicatory in the denomination. It is the evolution of almost 200 years of Church law and usage.

It files this Brief *Amicus Curiae* with the consents of counsel for the parties pursuant to Rule 42 (2) of the Rules of this Court. Copies of such written consents are attached as appendices hereto. For the reasons hereinafter stated, GCFA believes the decision of the Georgia Supreme Court in the instant case seriously impairs constitutionally protected religious freedoms. It urges reversal.

While the United Methodist polity is less unified and authoritarian than that of Presbyterianism, lying midway on the spectrum between the congregational and strictly hierarchical polities, UMC is nevertheless a "connectional" church. By tradition, United Methodism has sought to uphold the continued use of local church properties for general denominational purposes and the avoidance of misappropriation of such properties by local factions or dissident groups. Accordingly, while titles to local church properties in United Methodism are generally held by or subject to the direction of the respective boards of trustees of the individual incorporated or unincorporated local churches, *The Book of Discipline* includes a trust clause, the purpose of which is to insure the ongoing local use of such properties by the regularly constituted ministers and members of UMC.

Periodically, appropriate officials at the Annual Conference level<sup>2</sup> of UMC have found it necessary to litigate to uphold such trust provision against schismatic attempts to apply local church property to factional uses. Because of the presence of such trust clause, Methodist property cases have not typically involved inquiry into or enforce-

<sup>2</sup> The annual conferences are the fundamental constitutional bodies of United Methodism operating within prescribed geographical areas in the United States and abroad. They are in some respects comparable to Presbyteries, although United Methodist units, in general, are not layered vertically in an ascending order of authority as in Presbyterianism. Instead, the United Methodist polity is relatively decentralized and confederated in character.

ment of the decisions of church tribunals as in many of the Presbyterian cases. See, eg., *Brady v. Reiner*, 198 S.E. 2d 812 (W.Va. 1973). However, the courts have uniformly given cognizance to these internal arrangements within United Methodism for the protection of properties thereby deferring to ecclesiastical law according to principles broadly enunciated in *Watson v. Jones*, 80 U.S. (13 Wall) 679 (1871) and *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952). Connectional denominations such as United Methodism continue to rely upon a strong and unbroken application of such principles, as most recently enunciated in *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 49 L. Ed 2d 151 (1976).

## II. ARGUMENT

This Court's decision in *Serbian Diocese* identifies two important values which must be kept paramount in civil court cases involving ecclesiastical questions: (1) abstention from "extensive inquiry . . . into religious law and polity . . . ." (426 U.S. at 709); and (2) in the case of churches falling within the broad category of "hierarchical" polity, deference to the decision of the highest religious tribunal which dealt with the disputed matter (426 U.S. 720). While these values may, in a given case, seem to present a court with conflicting considerations (particularly where limited review of church documents is necessary to identify the tribunal to which deference is to be given), it is clear that the two concepts are essentially harmonious in their ultimate purpose. By deferring to ecclesiastical tribunals, the courts may avoid being drawn deeply into the thicket of doctrinal and ecclesiastical matters. This aim was aptly stated by Mr. Justice Brennan in *Serbian Diocese* where he noted as follows at 426 U.S. 709:

" . . . where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious



law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them."

In reaching its decision in the case at bar, the Georgia Supreme Court cannot have been mindful of the teachings of *Serbian Diocese*. Indeed, there is no indication in its opinion that *Serbian Diocese* was given even cursory consideration. The controlling facts were these: (1) The Presbyterian Church in the United States ("TPCUS") is a denomination falling generally within the broad "hierarchical" classification; (2) Vineville Presbyterian Church, at the time of the events here in question, was a sub-unit within the Augusta-Macon Presbytery of TPCUS; and (3) a regularly constituted tribunal (the "Commission") dealt with the schism in the Vineville church and ruled in favor of the loyalist minority, declaring it to be the true congregation of such church. Notwithstanding the clarity of these controlling facts and the blueprint for decision which *Serbian Diocese* would have afforded, the Georgia court adopted a "neutral principles" rationale whereby it disregarded all connectional church considerations and, in effect, treated the Vineville church as a congregational unit. It decided the case as if it were merely a quiet title suit wholly outside of the religious area.

We respectfully submit that the Georgia Court's use of a "neutral principles" rationale to convert this case into a mere title search is error. It is an over-reaction to this Court's teachings on that subject in *Presbyterian Church v. Hull Memorial Presbyterian Church*, 393 U.S. 440, 21 L.Ed. 2d 658 (1969) and *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 24 L.Ed. 2d 582 (1970). It is also a misuse and violation of those teachings.

In *Hull Memorial*, *supra*, this Court, in considering a similar Presbyterian property dispute, specifically disapproved of the Georgia Supreme Court's adherence to a "departure from doctrine" limitation on the implied trust theory of church property protection. Although this Court took care to note that only the "departure-from-doctrine element of the Georgia implied trust theory" was impermissible (393 U.S. at 450) the Georgia Court, on remand, and in the instant case, erroneously viewed *Hull Memorial* as mandating the total abolition of the concept of the implied trust.<sup>3</sup>

Similarly erroneous is the Georgia Court's overapplication of dictum in the Concurring Opinion of Mr. Justice Brennan in *Maryland and Virginia Eldership*, *supra*, 396 U.S. at 368 et seq. There, Mr. Justice Brennan observed that a given religious dispute might be resolved by a number of possible approaches, all of which would enable courts to avoid searching interpretations of church law and usage. One of the approaches identified was that of "neutral principles of law". 396 U.S. at 370. The Georgia Supreme Court apparently saw this language as creating a new *ratio decidendi* optionally available to civil courts in any religious property dispute and enabling the courts to ignore all connectional considerations which heretofore have been accorded respect in the resolution of such disputes.

In short, the Georgia Supreme Court, erroneously interpreting *Hull Memorial* and *Maryland and Virginia Eldership*, has totally repealed the doctrine of implied trust (as well as the respect for connectional churches which is inherent in that doctrine) and in the name of "neutral

<sup>3</sup> This is not to suggest that the relief sought by Petitioners is dependent upon a renewed application of the implied trust doctrine in the instant factual situation. Indeed, Petitioners have disclaimed any such reliance. It is important, however, to note the Georgia Supreme Court's position on this issue as an element of its current orientation regarding church property cases.



principles" has embarked upon a wholly mechanical "legal title" approach. Such a doctrine, if upheld by this Court, would ultimately mean that the entire spectrum of religious politics and faiths would be reduced to a congregational form for resolution of all church property questions. All cases would then turn on a review of deeds and local majority rule. This *amicus* is confident that this Court will not countenance such a result.

### III.

#### CONCLUSION

The continued viability of *Watson* and its progeny, particularly *Serbian Diocese*, is of pressing importance to all major "establishments of American religion." An overly narrow reading of *Hull Memorial* and *Maryland and Virginia Eldership* regarding "neutral principles" would preclude judicial knowledge of and adherence to a church's fundamental law and/or decisions of its highest judicatory, leaving the courts without a meaningful guide to decision. GCFA does not believe that these cases, in advertent to "neutral principles," established a new rule requiring courts to totally ignore the essential polity and internal governance of an established religion in the guise of applying irrelevant or at times totally contradictory "neutral principles." Accordingly, the decision below should be reversed.

Respectfully submitted,

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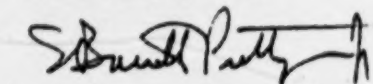
November 8, 1978

Samuel Witwer, Jr., Esq.  
125 South Wacker Drive  
Chicago, Illinois 60606

Dear Mr. Witwer:

I represent the Petitioners in Jones v. Wolf, No. 78-91, now pending in the Supreme Court of the United States. The purpose of this letter is to grant permission to The General Council on Finance and Administration of the United Methodist Church to file an amicus brief in that case in support of Petitioners.

Sincerely yours,



E. Barrett Prettyman, Jr.

EBP:mda

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RE: Jones vs. Wolfe  
NO. 78-91

Dear Mr. Witmer:

Please accept this letter as permission on behalf of the respondents to your filing a brief in the above-referenced case on behalf of the General Council on Finance and Administration of The United Methodist Church.

Yours sincerely,

*Warren Plowden*  
W. WARREN PLOWDEN, JR.

WWPJR/sls

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Supreme Court, U. S.  
**FILED**

**NOV 30 1978**

MICHAEL RODAK, JR., CLERK

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1978

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**No. 78-91**

---

R. W. JONES, SR., ET AL.,  
*Petitioners,*

v.

CHARLES T. WOLF, ET AL.,  
*Respondents.*

---

**BRIEF OF UNITED STATES CATHOLIC  
CONFERENCE AMICUS CURIAE**

---

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---

**BRIEF OF UNITED STATES CATHOLIC  
CONFERENCE AMICUS CURIAE**

---

**CONSENT OF THE PARTIES**

Both the petitioners and respondents have consented in writing to the filing of this brief amicus curiae by the United States Catholic Conference.

**INTEREST OF THE AMICUS**

**I.**

**Identification of the Amicus**

The United States Catholic Conference is a nonprofit corporation and an agency through which the Catholic Bishops of the United States collaborate with other members of the Church—priests, religious and laity—in areas where voluntary collective action on an inter-



diocesan and national basis can benefit the Church and Society.

USCC is an agency of the Catholic Bishops of the United States. Its predecessor, established in 1919, was known as the National Catholic Welfare Conference. The prime purpose of USCC is to unify and coordinate activities of the Catholic people of the United States in programs and works of education, social welfare, health and hospitals, family life, immigrant aid, poverty assistance, civic education, youth activities, communications and public affairs, with emphasis on the preservation of religious liberty in America.

## II.

### Interest of the Amicus in This Case

This case presents the question of Free Exercise rights of a church in the matter of internal governance. This amicus has a direct interest in the proper adjudication of disputes implicating these important First Amendment rights.

### ARGUMENT

Church property disputes cannot be severed from matters of governance and internal structure in the manner which took place in the instant case. The constitutionally required approach is, we believe, to consider such disputes in their totality, always bearing in mind that there may very well be First Amendment implications in the resolution of such a dispute. It is a misreading of the *Serbian Orthodox* line of cases to view such disputes as requiring adjudication by "neu-

tral principles".<sup>1</sup> Not all church property disputes can be resolved by "neutral principles". Only those instances where the right of governance and the internal autonomy of the church are not in issue are susceptible to resolution by "neutral principles":

"Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, 'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.' *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)." *Serbian Orthodox v. Milivojevic*, 426 U.S. 696, at 709.

The courts are forbidden under the First Amendment from imposing an ecclesiology on a church entity. Moreover, the constitutional limitations upon the court's power cannot be avoided through the use of "neutral principles". The method of induction employed by the court below in the instant case accomplished indirectly what the court could not do directly. The court below found that the absence of any instructions in the *Book of Order* dealing with the disposition of church property in a schism meant that the matter was to be resolved by "neutral principles" of property law. Specifically, the court construed the absence of such direction or language to mean that all disputes

<sup>1</sup> *Watson v. Jones*, 80 U.S. 679 (1871); *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960); *Presbyterian Church v. Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevic*, 426 U.S. 696 (1976).

should be resolved solely on the basis of deeds and other instruments of property ownership which can be taken into evidence. By this process the property of the Presbyterian Church of the United States was abstracted from the internal structure and governance mechanisms of that institution. Implicit in this decision is the notion that there could be nothing in the ecclesiology of the Presbyterian Church of the United States which could be controlling in the dispute. The property holding devices were deemed to be the only admissible evidence as to the disposition of the property.

The difficulty with this approach is readily apparent when one examines the court's line of reasoning which led to the result below. The court below adopted an argument from silence: that the fact that the *Book of Order* does not mention disposition of property in schism is probative that the property is to be disposed of by majority rule of the local congregation. The *Book of Order* is the organic constitution of the Presbyterian Church of the United States. It cannot be presumed to control schismatic churches. It can only be presumed to control those within its jurisdiction. The Vineland community was part and parcel of the General Assembly of The Presbyterian Church of the United States. According to the terms of the organic structure of that church, the disputes about the nature of the organization are to be resolved within the various adjudicatory bodies enumerated in the ascending hierarchical structure. Part of the Vineland community remains within the General Assembly of the Presbyterian Church of the United States.

The organization of the Presbyterian Assembly has not been altered by virtue of the schism. That organi-

zation remains intact. It has adherents that still reside in Vineland, Georgia. Obviously, those adherents, those members, are governed by the rules of governance of the General Assembly. The *Book of Order* provides the means for the General Assembly to identify its adherents.

Through the *Book of Order* the General Assembly has placed property management of its institutions in the hands of the local congregation. The *Book of Order* cannot be used to generate an argument of silence that the nature of the church has been changed by the structuring of the components of the institution. Obviously, the *Book of Order* could just as well have said that the property shall be held in the name of some other entity within the Presbyterian Church. It is the *Book of Order* which controls which entity shall hold title to the church property. Through the *Book of Order*, church governance has occurred. The General Assembly of the Presbyterian Church of the United States has made decisions about where property shall be vested, and it has the right, obviously, to decide the property shall be vested in some other manner. One cannot use the manner in which the property is held to deny the authority of the General Assembly.

The effect of the respondent's arguments would be to conclude that property holding device controls governance, whereas under the First Amendment governance should control property. The effect of the respondent's argument is that the General Assembly of The Presbyterian Church of the United States has lost its authority to identify its members because it chose to have the property held in the name of the local congregation.



The decision of the court below makes explicit reference to the fact that the court took no notice of those portions of the *Book of Order* which related to matters of internal structure and governance:

"Appellants cite other sections of the Book of Order pertaining to church courts. These deal with faith and the internal structure of the church but do not deal with property rights." App. Pet. 15a.

The court sought to treat the schism as a simple property dispute by separating property from governance. The court was inevitably forced to set the property question over against the governance question so that in the result the nature of the property holding device controlled and, in fact, eliminated the question of governance. An implicit decision on the ecclesiology of the Presbyterian church was reached through induction from the manner in which the property was held.

The court below reached the decision that The Presbyterian Church of the United States is "merely connectional". App. Pet. 15a. Through an induction that nature of the church could be construed from the nature of the property holding device. Since the property was held by the local congregation, the church could not be hierarchical, but merely connectional.

Churches exist in time and space. The spiritual work which they carry on, both in worship and in the works of service, takes tangible and physical manifestations in property: hospitals, orphanages and schools, as well as churches, rectories and parsonages.

The consequence of considering property as distinguishable from the church is to view the church as

somehow existing apart and separately from its physical, tangible elements. To suggest that church property can be treated by "neutral principles" which have no relevance to the First Amendment is to suggest that churches can, in fact, be cut up and dealt with in a piecemeal fashion without cognizance of the organic nature of the institution.

Religious bodies throughout the United States, including this *amicus*, have for a variety of reasons chosen to organize their activities into a number of civil structures. Nevertheless, none of these bodies would disown those activities. The civil life of those components may be varied, but the relationship to the ecclesiastical body remains intact, and significantly, these various structures owe their existence to the ecclesiastical bodies which called them into being.

The property holding devices may or may not reflect accurately the polity of the sponsoring church. The ecclesiology of a given religious body may not be expressible in civil terms. In point of fact, the canonical and spiritual life of the Roman Catholic Church is incapable of complete expression in Anglo-American civil law terms. The institutional forms of the Roman Catholic Church in the United States are always only an approximation of the nature of the Church. The Supreme Court decisions that have dealt with such problems have shown a remarkable sensitivity to the problem which translation of religious ecclesiology into civil terms poses.

"The hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interest in matters of purely ecclesiastical concern." *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).



**CONCLUSION**

The court below chose to ignore the nature of the governance of The Presbyterian Church of the United States. In our view, the court was duty-bound under the First Amendment Free Exercise Clause to take judicial notice of the fact that the church is governed by the authority of various levels of decision-making, and not by the will of a congregation. Civil courts are not free to ignore the nature of church governance in resolving church property disputes.

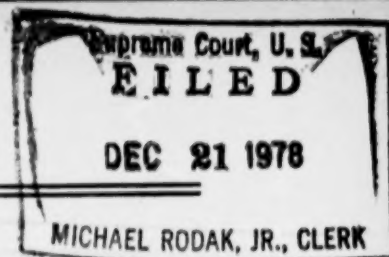
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-91

R. W. JONES, Sr., et al.,

*Petitioners,*

*vs.*

CHARLES T. WOLF, et al.,

*Respondents.*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA

## AMICUS CURIAE BRIEF OF THE ANGLICAN CATHOLIC CHURCH

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IN THE

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

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R. W. JONES, SR., et al.,

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*Respondents.*


---

 ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA
 

---

AMICUS CURIAE BRIEF OF THE  
ANGLICAN CATHOLIC CHURCH

The Anglican Catholic Church respectfully submits this brief in support of the position of the Respondents in this case. The filing of this brief as *amicus curiae* has been consented to by all the parties under *Rule 42(2)* of this Court and such consents have been filed with the Clerk of the Court.

## INTEREST OF AMICUS CURIAE

The Anglican Catholic Church is a newly formed church organization consisting of some 200 congregations with approximately 25,000 communicants, most of whom are former members of the Protestant Episcopal Church in the United States of America. As a result of certain fundamental disagreements with the policies of the Protestant Episcopal Church, substantial numbers of local Episcopal parishes terminated their affiliations with that church and joined to establish the Anglican Catholic Church. Thereafter, lawsuits were instituted by various Protestant Episcopal dioceses seeking to gain control of the properties of these various withdrawing parishes.<sup>1</sup> The plaintiffs in many of these cases are asserting a legal position similar to that asserted by the Petitioners in the instant case. Therefore the Court's decision in the pending matter will have a profound effect upon the outcome of these suits and upon the future of the Anglican Catholic Church.

It is the position of the undersigned *amicus* that this Court should affirm the decision of the Georgia Supreme Court and in so doing reaffirm the principle that, except as otherwise explicitly provided by contract or trust arrangement, church property disputes are to be resolved *only* through the application of traditional principles of corporate and private association law and not on the basis of hierarchical determinations of "true" adherence to certain religious doctrines.

1. See e.g., *The Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 161 N.J. Super. 230 (Ch. Div. 1978); *The Diocese of Newark, et al. v. William F. Burns, et al.*, Docket No. C-4164-77 (N.J. Super. Ct., Ch. Div., filed July, 1978); *Protestant Episcopal Church v. Barker*, Nos. C188907, C189571, C189572, C190652 (Los Angeles, Calif. Super. Ct., filed February, 1977); *The Diocese of Southwestern Virginia of the Protestant Episcopal Church in the United States of America v. Wyckoff*, Chancery Bill No. 3748 (Amherst City, Va. Cir. Ct., 1978).

## COUNTER-STATEMENT OF QUESTION PRESENTED

Whether, in the conceded absence of any contractual or trust relationship giving a hierarchical church body the power to control the property of local congregations, the purely doctrinal decisions of a hierarchy may nevertheless frustrate the will of a majority of the members of a local congregation to disaffiliate from their church denomination and retain control over their congregational property.

## ARGUMENT

Hierarchical structure of a church organization alone is not a sufficient basis for requiring civil courts to defer to the decisions of a hierarchy affecting the control of local congregation property in the absence of an agreement or trust arrangement which binds the congregation to accept the decisions of the hierarchy.

Petitioners' basic position before this Court is that, solely because of the hierarchical structure of The Presbyterian Church in the United States ("TPCUS"), the property of the Vineville Presbyterian Church ("VPC") is not subject to the control of its membership and trustees in accordance with traditional principles of corporate and private association law. Rather, Petitioners argue that only the minority of members of VPC determined by the hierarchy, as an ecclesiastical matter, to be adherents to the "true" doctrines of the church denomination have the right to control the property of VPC.

The undersigned *amicus* contends that hierarchical trappings and structure alone are not sufficient to grant a church hierarchy the power to use religious doctrine to overrule the decisions of the duly elected trustees or the membership of a local congregation with respect to such congregation's property. The rulings of a hierarchical body as to matters of control over local church property take on the character of "religious rulings" only when the nature of the relationship between the individual congregation and the general church is such that it is clear that authority over such property has been granted to the general church by agreement or otherwise.

The fallacy of Petitioners' position is illustrated by the hypothetical situation in which the constitution of a

hierarchically structured church specifically reserves to local congregational bodies the right to disaffiliate and retain control of their properties on the basis of a simple vote of the membership. Surely no court in such a situation would permit the hierarchy to frustrate the will of the local church and the terms of the church constitution.<sup>2</sup>

In those cases in which courts have spoken in terms of deferring to "hierarchical decisions," the reference was only a label for a finding that in the particular instance the hierarchy had been given, by agreement as set forth in the denomination's organic documents or as the result of a trust arrangement or otherwise, the authority to decide the issue as a religious question. The classic formulation of this concept is found in *Watson v. Jones*, 80 U.S. 679 (1871), where Justice Miller stated that civil courts are bound to accept the decisions of church judicatories in matters of "discipline or of faith, or ecclesiastical rule, custom or law" only when dealing with church organizations "in which there are superior ecclesiastical tribunals with a *general and ultimate power of control more or less complete* in some supreme judicatory over the whole membership of that general organization." 80 U.S. at 722-723. (Emphasis added.)

Thus Petitioners completely miss the issue when they argue that the Georgia Supreme Court was bound to accept, as an "ecclesiastical matter," the determination of

2. See description of the Presbyterian Church in America and its specific affirmation in its *Book of Church Order* of congregational control of church property set forth at page 4 of Brief *Amicus Curiae* filed in this case by Dr. G. Aiken Taylor, Moderator of the Presbyterian Church in America in opposition to Petition for Writ of Certiorari. See also opinion of Court of Appeals of Maryland in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 241 A.2d 691 (1968) in which that court described the Protestant Episcopal Church as being hierarchical in certain respects but congregational with respect to local church property. 241 A.2d at 699.



the Commission appointed by the Augusta-Macon Presbytery as to the identity of the "true congregation" of VPC. If VPC did not surrender to TPCUS its power as a separately organized entity to act in accordance with its own constitution and by-laws to terminate its relationship with TPCUS, the Commission's ecclesiastical determination as to the identity of the "true congregation" is totally irrelevant. Only if the substance, not just the form, of the relationship between VPC and TPCUS is such that the local congregation is, by agreement or otherwise, forever bound to the general church, does the ecclesiastical determination of the identity of the true church members become relevant.

It is precisely because of Petitioners' repeated attempt to describe the controversy as a "religious" one and their failure to deal with the basic issue of the particular nature of the relationship of Vineville Presbyterian Church to TPCUS, that Petitioner's reliance upon *Serbian Eastern Orthodox Diocese v. Milivojeovich*, 426 U.S. 696 (1976) is misplaced. *Serbian* involved a struggle for control within the church organization itself. The issue was not between the church and persons who no longer claimed to be a part of the church, but rather involved conflicting claims asserted by persons all of whom were claiming to be part of the same church organization. It was in that factual context, involving the right to determine a bishop of the church, that this Court held that the Constitution requires civil courts to accept the decisions of ecclesiastical tribunals as binding. One can suggest no clearer example of an issue which must be decided by a church body than the identity of its own clergy, and yet Petitioners would have this Court treat a dispute as to the right to property in the same manner as a dispute over the right to an ecclesiastical office.

In the instant case, however, the issue is not between parties claiming membership in the same church organization. The Respondents have openly terminated the affiliation between themselves and TPCUS. They in no way pretend to be part of TPCUS or "true members" of such church. The ecclesiastical question of whether others are "true members" of the church is beside the point. The issue quite simply is the nature of the pre-existing relationship between the local church entity and the general church and the powers which were granted to the general church with respect to the local entity and its properties. The decision as to the nature of such relationship is to be made by the courts and not by the hierarchical body. As Justice White said in his concurring opinion in *Serbian*:

"Major predicates for the Court's opinion are that the Serbian Orthodox Church is a hierarchical church and the American and Canadian diocese, involved here, is part of that church. These basic issues are for the court's ultimate decision, and the fact that church authorities may render their opinions on them does not foreclose the courts from coming to their independent judgment." 426 U.S. at 725.

The outcome in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 241 A.2d 691 (1968), *vacated and remanded*, 393 U.S. 528 (1969), *reaffirmed*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed*, 396 U.S. 367 (1970), demonstrates that this Court has previously refused to accept Petitioners' argument in Point II of their brief that there must be complete and abject deference to every decision of a hierarchical body. Petitioners describe the local churches in that case as "congregational in nature and wholly independent of the Eldership [hierarchy], at least insofar as their individual property was concerned." (Pet. Brief at 20). In fact, the Maryland Court of Appeals stated that the church had

"some and perhaps more of the characteristics of the presbyterial polity in that there is a governing body beyond that of the local congregation consisting of elders, the ordained ministerial elders (teaching elders) and the elected lay persons (ruling elders) and a general eldership over all the intermediate elderships." 241 A.2d at 699.

Nevertheless, in spite of the obvious hierarchical structure, the court went on to find that an examination of the constitutions of the entities involved and other relevant documents demonstrated that the local congregations were completely independent of the hierarchy with respect to the use and control of property. The Maryland court reaffirmed its finding upon rehearing and this Court dismissed the appeal noting specifically the Maryland court's reliance "upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property." 396 U.S. at 367. See also this Court's refusal to disturb the Georgia Supreme Court's ruling against the hierarchy in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Church*, 396 U.S. 1041 (1970).

The Supreme Court of Georgia's analysis of the present case in terms of the absence of an "implied trust" in favor of the general church was simply another means of stating that there was nothing in the relationship between VPC and TPCUS which gave TPCUS the right to assert ecclesiastical control over VPC's property. *Jones v. Wolf*, 241 Ga. 208, 243 S.E.2d 860, 863-864 (1978). Its discussion of the "property rights" of the general church and the absence of more than a "mere connectional relationship between the local and general church," was in fact a finding that the relationship between TPCUS and VPC did not meet the standard set down in *Watson* that

the hierarchy must have "a general and ultimate power of control more or less complete" before a dispute over control of property may be treated as a religious controversy. *Id.* at 864.

The analysis by the Georgia court becomes more apparent when the decision is read in conjunction with the earlier opinion of the same court in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322 (1976), which is cited and relied upon extensively by the court in its opinion in the instant case. Not surprisingly, Petitioners do not cite *Carnes*, even though that case involved a factual situation similar in all but one vital respect to the instant case and resulted in a finding for the general church against a secessionist United Methodist Church group. In *Carnes*, the Georgia Supreme Court reviewed the *Book of Discipline* of The United Methodist Church and found that the constitution of that denomination specifically and unequivocally provided that all property held by any local church was held in trust for the use and benefit of both the local church and the general church. Accordingly, the court held that the local church had entered into a binding relationship with its parent church by reason of the existence of trust provisions in its constitution, by-laws, rules and other documents pertaining to the control of property. 222 S.E.2d at 328.

In the instant case, however, after analyzing the Presbyterian *Book of Church Order*, the Georgia Supreme Court found no language of trust similar to that found in The United Methodist Church *Book of Discipline*, i.e., the court found nothing in the connectional relationship which indicated any surrender to the ecclesiastical authority of control over the local church property. The court characterized the sections of the *Book of Church Order* cited by the Petitioners to show hierarchical authority, as



dealing "with faith and the internal structure of the church" but not "with property rights." 243 S.E.2d at 863.

The rationale for the approach taken by the Georgia court that there must be an inquiry in each case into the substance and nature of the hierarchical relationship is based on traditional principles of contract, private association and trust law. Implicit in these principles is the concept that in order to permit parties to arrange their affairs, as a matter of fairness, they should be placed on notice as to the nature of the controls which may be exercised by the hierarchy over the properties of the local church organization. In the absence of an explicit provision in the denomination's constitution or other organic documents granting the general church an interest in the properties of the local church, the local church organization should be free to chart its own course as a separate entity in accordance with traditional doctrines of corporate and private association law.

Petitioners argue that the doctrine of "majority rule" could lead to takeovers of local churches through the concerted efforts of a number of individuals joining a congregation and acting to oust the original members from control. (Pet. Brief at 35-36.) Petitioners conveniently avoid taking notice of the fact that this is precisely the risk which "congregational" churches face all the time. What is there in the nature of a church affiliated with a hierarchically structured denomination that should insulate it from the effects of membership activity? If hierarchically structured denominations wish to limit the freedom of choice of local church entities and safeguard themselves against the possible use of local church properties for purposes not sanctioned by the hierarchy, they should follow the suggestion made by Justice Brennan in *Presbyterian Church in the United States v. Mary Eliz-*

*abeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1968), and "structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Id.* at 449.

This Court has on several occasions expressed its unhappiness with the fact that disputes having their origins in ecclesiastical controversies are brought to the civil courts for resolution, and has suggested in no uncertain terms that church organizations and individuals structure their relationships so that courts need not be involved in such disputes. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Church*, *supra*, at 449; *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, *supra*, at 368 (concurring opinion). If Petitioners fear the type of "take-over" described in their brief, and if they wish to prevent future defections of the kind that took place in the instant case, then it is incumbent upon Petitioners and others involved in similarly structured church organizations to restrict the use of local congregational property to purposes sanctioned by the hierarchy through express trusts or by causing title to be vested in the hierarchy.

It is submitted that the ~~unhappiness~~ of the Georgia Supreme Court in its opinions ~~in the instant case~~ and in the more recent case ~~of~~ *Wilburn*, 241 Ga. 322, 245 S.E.2d 273 (1978) is based precisely on the approach suggested by Justice Brennan in *Blue Hull* that church organizations must structure their relationships to accomplish their desired ends. In the case of churches which exert the effort to obtain the consent of their various constituent members to a relationship which binds the local churches to the hierarchy, courts, as in *Carnes*, should enforce such a relationship under the very principles of "simple contract and private association law"



cited by Petitioners. (Pet. Brief at 29.) As Mr. Justice Brandeis wrote in *Gonzalez v. Archbishop*, 280 U.S. 1 (1929):

"In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, *because the parties in interest made them so by contract or otherwise.*" 280 U.S. at 16. (Emphasis added.)

Where, however, there is no basis for finding the contractual or associational relationship, sometimes referred to as an "implied trust" in favor of the hierarchy, the courts, consistent with the directives of this Court to avoid ecclesiastical disputes, must follow traditional principles of title and corporate democracy in resolving the conflicting rights to church property.<sup>3</sup>

Were this Court to change the principles that it set down in *Blue Hull* and reiterated in *Sharpsburg*, and adopt the thesis advanced by Petitioners that the decisions of the hierarchical body must in all cases be controlling, it would in fact be moving right into the area that it has prohibited the courts from entering, *i.e.* the area of ecclesiastical disputes. Acceptance of the Petitioners' argument would place the courts in the posture of enforcing the doctrines and disciplines of the hierarchy. The power of the civil courts would thereby be used to produce religious con-

3. The grant to the hierarchy of the power to control the local church organization must be clearly expressed and must not depend upon the resolution of conflicting interpretations of religious law. As Justice Brennan stated in *Sharpsburg*:

"In other words, the use of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity." 396 U.S. at 370.

formity by threatening congregations with loss of their properties, which in most cases the local congregants have provided through their voluntary contributions, in the event congregants deviated from the decrees of the ecclesiastical authorities. The effect upon the exercise of religious freedom and the hazards of "inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern" inherent in such an approach are patent. *Blue Hull, supra*, 393 U.S. at 449. The Court would be establishing and enforcing state controls which the parties themselves did not choose to incorporate in their church structure. We would be witnessing the very "employment of organs of government for essentially religious purposes" that was proscribed by the decision in *Blue Hull, Ibid.*

In this regard, two comments by the Maryland Court of Appeals in the second *Sharpsburg* opinion are of particular relevance to the case at bar:

"It is apparent that the Constitution of neither Eldership contains *any prohibition against the withdrawal* from the Eldership of a local congregation nor is there any provision for loss or forfeiture of property by a local congregation if it does withdraw from the Eldership. As we also pointed out in our first opinion, a denomination *may* provide in its constitution for a prohibition against withdrawal and for a forfeiture of local church property in the event of a withdrawal, but neither Eldership in the present case made any such provision. 254 A.2d at 168. (Emphasis that of the court.)

• • •

We do not understand that the decision in *Hull* requires the State equity courts to provide effective discipline and control of a denomination over its clergy or to maintain that denomination's "purity of doctrine." As we see it, this would be "establishment of

religion" with a vengeance, and under neither the Maryland law nor under the prohibitions of the First Amendment are we permitted to do this. We have no right to prevent the local congregations from separating from the Eldership and from refusing to accept the ministers appointed by the Eldership. To do this would deny to the members of the local congregation *their* freedom of religion and would in effect put the judicial power of the State behind the enforcement of the doctrine and discipline of the Eldership thus, in effect, "establishing" the religion promulgated by the Eldership. This we are forbidden to do. 254 A.2d at 170. (Emphasis that of the court.)

## CONCLUSION

This Court's opinions in *Blue Hull* and *Sharpsburg* have placed hierarchical church bodies on notice that if they wish to have the authority to decide church property disputes they must specifically provide for that authority in their basic organizational documents. That power may not be usurped by ecclesiastical tribunals by simply characterizing a dispute as a religious controversy. In the instant case, TPCUS failed to respond to the Court's earlier opinions and did not structure its relationships with VPC in such a manner as to reserve to itself the right to decide controversies relating to the control of the local church property. Accordingly, this Court must apply traditional principles of corporation and private association law and affirm the decision of the Georgia Supreme Court in favor of Respondents.

Respectfully submitted,

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